

MONTANA LEGISLATIVE HISTORY

Chapter 332 19 95

Bill H _____ S 63 Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) Mar 10 ☒ C

Mar 14 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Mar 14 ☒ C

S. Committee on Judiciary

Hearing Date(s) Jan 18 ☒ C

Jan 23 ☒ C

_____ ☐ C

_____ ☐ C

Jan 23 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1/05	FIRST READING		
1/05	REFERRED TO JUDICIARY		
1/12	HEARING		
1/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/19	2ND READING PASSED	49	1
1/20	3RD READING PASSED	49	1
	TRANSMITTED TO HOUSE		
1/23	FIRST READING		
1/23	REFERRED TO JUDICIARY		
2/01	HEARING		
3/01	TABLED IN COMMITTEE		
3/22	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

SB 62 INTRODUCED BY DOHERTY, ET AL.
 ALLOW INDIVIDUAL INCOME TAX DEDUCTION FOR MEDICAL INSURANCE
 PREMIUMS

1/06	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO TAXATION		
1/06	FISCAL NOTE REQUESTED		
1/12	FISCAL NOTE RECEIVED		
1/13	FISCAL NOTE PRINTED		
1/17	HEARING		
3/06	REFERRED TO JOINT HEALTH CARE SELECT		
3/09	HEARING		
3/14	TABLED IN COMMITTEE		
3/29	MISSED TRANSMITTAL DEADLINE FOR 71ST DAY		
	DIED IN COMMITTEE		

SB 63 INTRODUCED BY CRIPPEN, ET AL.
 REVISE TORT VENUE FOR OUT-OF-STATE CORPORATION

1/06	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO JUDICIARY		
1/18	HEARING		
1/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/24	2ND READING PASSED	34	15
1/25	3RD READING PASSED	34	16
	TRANSMITTED TO HOUSE		
2/27	FIRST READING		
2/27	REFERRED TO JUDICIARY		
3/10	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/28	2ND READING CONCURRED	57	42
3/29	3RD READING CONCURRED	55	43
	RETURNED TO SENATE		
3/30	SIGNED BY PRESIDENT		
3/31	SIGNED BY SPEAKER		
4/03	TRANSMITTED TO GOVERNOR		
4/08	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 332		
	EFFECTIVE DATE: 10/01/95		

SENATE BILL NO. 63

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PLACE OF TRIAL FOR A TORT ACTION WHEN THE DEFENDANT IS AN OUT-OF-STATE CORPORATION; AND AMENDING SECTION 25-2-122, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-2-122, MCA, is amended to read:

"25-2-122. Torts. (1) The Except as provided in subsection (2), the proper place of trial for a tort action is:

~~(1)(a)~~ the county in which the defendants, or any of them, reside at the commencement of the action; or

~~(2)(b)~~ the county where the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county where the contract was to be performed.

(2) If the defendant is a corporation incorporated in a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation has its principal place of business."

-END-

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on January 18, 1995, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 63, SB 113, SB 123
Executive Action: SB 61, SB 81

{Tape: 1; Side: A; Approx. Counter: 0000, Comments: poor sound}

EXECUTIVE ACTION ON SB 61

Motion/Vote: SENATOR MIKE HALLIGAN MOVED THE ACCEPT THE AMENDMENTS AS CONTAINED IN EXHIBIT 1. The MOTION CARRIED UNANIMOUSLY on an oral vote.

Motion/Vote: SENATOR HALLIGAN MOVED SB 61 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY on an oral vote.

Mr. Hill contended that his understanding of punitive damages was different than the chairman's, that is, that punitive damages were not only awarded because of the heinousness of the conduct, but because the punitive damages get people's economic attention. This bill could create a conflict of interest between an attorney and his client, he said. There are strong public sentiments that somehow punitive damages are improper because it's a windfall to the plaintiff. To address that concern, his organization thought it was important to stand up in support.

Sponsor's Closing:

SENATOR TOEWS said that it was not the responsibility of individuals to punish individuals. He also doubted if one person should be compensated for what happened to a much larger group. If the larger group is damaged, the larger group should be paid, he said.

{Tape: 1; Side: B; Approx. Counter: 30.5 approx.; Comments: tape re-started.}

HEARING ON SB 63

SENATOR HALLIGAN ASSUMED THE CHAIR.

Opening Statement by Sponsor:

SENATOR BRUCE D. CRIPPEN, Senate District 10, Billings, sponsored SB 63. He said that this bill is an act that would revise the place of trial for a tort action when the defendant is an out-of-state corporation. For an example, SENATOR CRIPPEN used a hypothetical situation wherein a railroad worker was injured in the State of Nebraska and a case filed. Under current law, he said, the plaintiff would have the option to come to another state to file the action and go anywhere in that state. There is a lot of forum shopping going on, he said. The courts are starting to bog down, and he thought Montana courts ought to be for Montana citizens. They ought to be able to try cases of law where the accident occurred in the state and where the parties are in the state. We should not load our courts up with cases where the accident occurred elsewhere and where the other parties live. Just because a company happens to do business in the state, they should not be able to use our court system to handle those situations. This bill rectifies that and provides an exception to the current law that if the defendant is an out-of-state corporation, the proper place of a trial for a tort action would be: a) the county where the tort was committed, b) county where the plaintiff resides, or c) the county in which the county in which the corporation has its principal place of business. There will be an amendment clarifying the principal place of business, he said.

Proponent's Testimony:

Mark Petersmeyer, Libby, represented Noranda Minerals Corporation

as their engineer and spoke in favor of the bill. The existing law defines the proper place of venue for defendants in tort cases, he said, and it clarifies the place of venue for corporations but does not distinguish between corporations from out of the state and those organized in the State of Montana. A corporation formed in Montana is deemed to be a resident of the county in which it has its principal place of business. However, in 1924, the Montana Supreme Court ruled that out-of-state companies can't have a legal place of residence. Noranda, for example, he said, is chartered in the State of Delaware, but they have invested tens of millions of dollars in Lincoln County, Montana as well as operations elsewhere. The Supreme Court, by saying that these corporations have no place of residence, opened the door to the present situation, that is, the only proper place for tort action is wherever the plaintiff's attorney says it is. The venue law says that the action should take place in some place where there is a connection, to the parties or the subject matter in dispute. The present situation is discriminatory, in that it makes corporations like Noranda second-class citizens. They are practically precluded from arguing in favor of change of venue. He related the extensive investment his company is making in the state. He also told the committee of a case in which his company is involved: the company is in Lincoln County, the alleged tort occurred in Lincoln County, the plaintiff lives in Lincoln County, but the case will be tried in Cascade County. The ends of justice will not be served by treating us differently, he said. The issue, Mr. Petersmeyer contended, is that corporations like theirs are effectively denied the ability to argue the change of venue, while Montana Corporations are able to argue for a change. Not only unfair, he said, this situation is bad for business in Montana and harms overall investment opportunities.

Leo Barry, representing Burlington Northern Railroad, spoke in favor of the bill, saying that Montana and out-of-state corporations do not have a place of residence by Montana state law. The railroad is particularly unique because of its Workers' Compensation system in which, by federal law, the railroad and its employees are prohibited from participation. They have a fault-based system, he said, which results in tort litigation. Mr. Barry introduced a handout (EXHIBIT 7) entitled "Lawsuits filed in Montana 1993 and 1994. Of the 37 cases listed on the first page, none of the individuals were residents of Montana, he said, and 31 of the cases had no connection by either plaintiff's residence or location of the tort. On the second page, he told the committee that of 91 cases filed on behalf of Montana residents, 64 of them were filed in Cascade County. 89 per cent of those had no connection with Cascade County. This costs the counties money, he said, because the average case takes about seven days for each case tried, and there are still costs associated with those which are not tried. He guessed the cost at \$7,000 per case. An in-state corporation, he said, could only be sued in two places: where the tort occurs, and its place of residence, so if Montana Power is sued, they must take place where the tort occurred or in Butte. What this bill would do is

give the plaintiff three options: 1) he can sue where the tort was committed, 2) he can sue where the plaintiff resides, or 3) **Mr. Barry** set forth an amendment which says: he can sue in the commune where the company has a registered agent. (EXHIBIT 8) He said that when he ran this by the opposition, they still could not agree, so he added the second provision, "in the first judicial district." This would give plaintiffs four choices depending on facts and circumstances. Another issue the opposition had expressed is that of the location of doctors. He said that 1) most of the time doctors don't testify in court anyway, they videotape their testimony and 2) this bill does nothing to restrict their access to federal court for BN cases. He urged passage of the bill.

John Alke, representing the Montana Defense Trial Lawyers, spoke in support of SB 63.

John Fitzpatrick, representing Pegasus Gold Corporation, in support of the bill.

Jim Tutwiler, representing the Montana Chamber of Commerce, said that they believe SB 63 to be a fair bill and could restore some predictability, and would move toward the center in treating out-of-state corporations, which are a vital part of our economy, the same as in-state corporations. He urged passage of the bill.

Russ Ritter, representing Kasler Holding Company of California, a corporation involved with the Washington Corporation of Missoula, spoke in favor of the bill and urged passage.

Jerome Anderson, attorney, representing Shell Western Exploration Production, Inc., said that they are the largest crude oil producer in the state. They are an out-of-state corporation and they support this legislation for the reasons and purposes previously stated.

Don Allen, on behalf of the Montana Wood Products Association, told the committee that their membership lists both in- and out-of-state companies, and they thought it was a fair bill because it would treat both entities equally.

Opponents' Testimony:

Zander Blewett, attorney, Great Falls, representing himself, spoke against the bill. He told the committee not to think for one moment that this bill wasn't brought to them by the Burlington Northern Railroad. It is important, he said, to realize a major distinction between what **Mr. Petersmeyer** is talking about and what Burlington Northern is talking about. He said the bill was unjust and unfair as it would pertain to the railroad workers in the state and the rest of the citizenry. He said he had worked for several years to end the out-of-state injured workers cases in this state, as had others, which he claimed was a serious problem. He offered an amendment

(EXHIBIT 9) which would cure the problem that **SENATOR CRIPPEN** put before them. The out-of-state lawyers had no business taking an injured worker working for BN in other states, and bringing them to our state, he said, and this amendment would stop that. The BN, he contended, had asked the committee to decimate the right of BN workers under what's called the FELA (Federal Employers Liability Act). They wanted to force a Havre employee, for instance, who was injured in Havre, to sue the BN in Havre, where the BN has such massive presence and power. BN knows, he maintained, that the workers will not get their fair shake. There is no Workers' Compensation for these workers, he said, and the plaintiff is required, by federal law, to prove the railroad is negligent or he gets zero. The railroad, then, tries to prove the worker negligent, cutting down the damages, he said. Under the federal act, he explained, Congress has said that you can bring this action in any district in which the defendant shall be doing business at the time of the action. A second handout was received from him (EXHIBIT 10).

{Tape: 2; Side: A; Approx. Counter: 25.8}

He said he took exception with **Mr. Petersmeyer's** statement that he was stuck with where the case was filed. He could remove it anywhere, he said, and there is a specific statutory provision that says they have a convenience of the witnesses (say, in Libby) and the court can move the action to Libby. This bill is a furor created by the railroad, he again contended. He introduced **Kelly Erickson**, a railroad worker from Havre, who was exposed to creosote and suffers from brain cancer. A portion of his brain had been removed, he stated, and he is going to die. He asked **Mr. Erickson** to tell the committee the effect it would have if he had to sue in Havre where his friends and everyone he knows is connected to the railroad. His problem started in Butte, and he said, that's why the legislature said out-of-state corporations can be sued where the plaintiff desires.

Kelly Erickson, Havre, represented himself in this hearing. He was hired in 1978 for the railroad and had worked all over the division, he said. He was working in Great Falls, lived in Great Falls, and was exposed in Great Falls. He has children, ages 6 and 9, in his care, he said, in addition to his wife. He said he did not want to take the suit to Havre, believing that he could not get a "fair shake," because of the influence of the town. He preferred to go to Great Falls. He opposed the bill on these grounds.

John Holmes, Havre, representing himself spoke in opposition to the bill. He had lived in Havre most of his life, working for BN for 28 years, he said. He had suffered injuries in 1992 under their employ and did not think that anyone should dictate to him where the case should be filed, he said. Havre is a BN railroad town, he maintained, and the bias exists because the BN puts money into the coffers of the town, whether it is car dealers, construction companies, subcontractors, many are affected by BN.

These businessmen would be obligated to BN in court action if they were chosen for jury duty in the case, he averred. He felt that both sides should be afforded an opportunity for a neutral playing field.

Steve Sapp, Havre, representing himself, also spoke in opposition to HB 63. He said he also was an injured railroad worker, born and raised in Havre, and said all his relatives lived and worked for BN in Havre. In a 1992 downsizing, 150 families had to leave BN in Havre, moving all across the U.S. He reiterated that there was a bias in Havre, as well as across the Hi-Line in regard to BN. He said he needed a fair chance as a taxpayer and Montana resident for 40 years and he believed he had to have the action heard in a community not controlled by BN.

Erik Thusen, attorney, said in opposing the bill that he spoke for Montana people. He said the reason for such distinguished sponsors for the bill was the fear of out-of-staters coming in to put unnecessary burdens on the court system and the coffers. To address Noranda's concerns, he said, an amendment could be added to indicate that it applies anywhere where the non-resident corporation in doing business in the state, rather than the principle place of business. He maintained that BN had the home-field advantage and could intimidate the opponent. He termed the legislation, to pit injured workers against BN on their home field as grievous legislation. He begged the committee to adopt amendments so that the bill did not hurt Montanans.

Russell Hill, Montana Trial Lawyers Association (MTLA), strongly opposed SB 63. He submitted written testimony (EXHIBIT 11) but added some remarks. He said the Mr. Blewett and Mr. Thusen were also members of MTLA, submitting amendments, but that they represented themselves, and the MTLA does not stand behind them in support, but rather proposed a separate amendment. This bill is only for out-of-state corporations, he said, and in doing so, prejudices more than 800,000 Montanan citizens.

Gary Spaeth, State Auditors' Office, representing Mark O'Keefe, opposed SB 63. The insurance industry in Montana receives 1.4 billion dollars in premiums each year from out-of-state insurance corporations, he said. He felt that this limits the rights and options of insurance consumers in the state.

Fran Marceau, representing the United Transportation Union, spoke in opposition to SB 63. He submitted written testimony. (EXHIBIT 12).

Don Judge, representing the Montana AFL-CIO, and speaking for Jerry Driscoll of the Montana State Building Construction Trades Council, asked the committee to register their opposition to SB 63. He further stated that he had asked the Department of Labor to investigate this bill in conjunction with their ability and their locations of filing wage claims and unemployment compensation claims, which are now filed in Helena. He was

concerned about a fiscal note attached to them and if they would have to file the claims in other courts around the state.

Melissa Case, representing the Montana Hotel Employees and Restaurant Employees Union, spoke in opposition of the bill.

Jim Jensen, Montana Environmental Information Center, opposed the bill on the grounds of shenanigans he had seen in regards to forum-shopping. He offered documentation, if asked, to the committee.

Ed Caplis, representing the Montana Senior Citizens Association, opposed the bill.

David Ditzel, representing the Brotherhood of Locomotive Engineers, Montana, appeared on behalf of his organization and expressed their opposition to the bill. He submitted written testimony. (EXHIBIT 13).

Questions From Committee Members and Responses:

SENATOR BARTLETT asked about the proposed amendments and asked the testifiers to help sort out the papers.

SENATOR DOHERTY asked **Mr. Alke** why in the last hearing he had said that a juror could not be impartial if he felt that there was a monetary interest as stake, then why would a juror living in Havre that relied upon the Burlington Northern be able to give a fair and impartial verdict to an injured worker?

Mr. Alke said he should not give an opinion on what may or may not happen in Havre.

SENATOR DOHERTY pursued the question by substituting any town in which a dominant industry is being sued.

Mr. Alke asked **SENATOR DOHERTY** to remember his question that couldn't he, through voir dire weed out that sort of thing. He said that he could not even ask the question on voir dire because he would be informing the jury of the existence of the law. In the case of prejudice or bias, that is the reason you have voir dire, he said, to inquire into the beliefs, connections and philosophies of the potential jurors. If bias is indicated, he said, they could be challenged for cause, so you would assume through the voir dire process that you could eliminate those problems.

SENATOR GROSFIELD asked **Leo Barry** in his estimate of court cases costing \$7,000 each, what would be the percentage of cost to the state, and to the county.

Mr. Barry said that of the \$7,000, \$5,000 would be paid by the county and \$2,000 by the state.

SENATOR GROSFIELD asked if in the trials listed on his exhibit, those counties were paying costs for action that occurred in another county?

Mr. Barry answered yes, and that he believed that those figures were conservative because it did not take into account each pre-trial activity that the circuit court has in relation to those actions.

SENATOR HALLIGAN asked Mr. Barry to comment on the amendment by Mr. Blewett. He responded that he had not seen it, but that he understood that it would prohibit non-residents of Montana from filing those actions. He thought that there would be an equal protection problem with that and would like it to be struck. In his estimation, Mr. Hill's amendment would not solve the problem, it would allow the company to be sued anywhere it does business, and he contended that was an undefined standard.

Mr. Blewett asked to be allowed to answer. He gave the committee an overview of a case called Missouri vs. Mayfield. The U.S. Supreme Court said that if a state chooses to prefer residence in access to often overcrowded courts and to deny such access to all non-residents, whether its own citizens or those of other states, is a choice within its own control. This is also true of actions for personal injuries under the actions of LFLA, he said. The Supreme Court has said we can keep those out-of-staters out of our state and quit paying for them.

Closing By Sponsor:

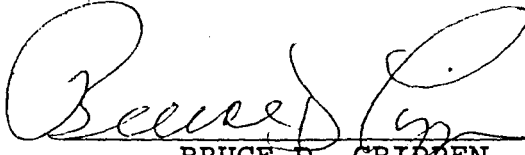
SENATOR CRIPPEN closed SB 63 by commenting on the amendment. He had heard of that case before, he said, and felt it was a totally different subject matter. He said that if a worker were injured in Havre while working for Montana Power, they would have to go to Butte under present law. Talk about the hand that bites you, he said, that might be the exception to the rule. The crux of the opponents' arguments seemed to be that they did not want to have their action in a company town and he found it hard to believe that a person who lives in that town would be without influence, but if there was, then it could be moved to the county in which the plaintiff resides. To satisfy the other side, maybe we should keep it so we can't go to where the plaintiff resides or the defendant has their place of business. Perhaps, he said, we should just say the action should be held where the tort was committed and leave it at that.

THE FOLLOWING DOCUMENTS WERE SUBMITTED AFTER THE CLOSE OF THE HEARING:

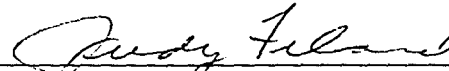
SENATOR DOHERTY presented a position statement. (EXHIBIT 14)
John C. Hoyt present comments on Senate Bill 63. (EXHIBIT 15)
Donald R. Judge, Executive Secretary, AFL-CIO, submitted written testimony. (EXHIBIT 16)

ADJOURNMENT

Adjournment: ACTING CHAIRMAN MIKE HALLIGAN adjourned the hearing
at 1:03 p.m.



BRUCE D. CRIPPEN, Chairman



JUDY FELAND, Secretary

BDC/jf

SB63

Exhibit 1

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. #7

DATE 1-18-95

FILE NO. SB63

SUITS FILED IN MONTANA 1993 AND 1994
NTIFFS RESIDENTS OUTSIDE MONTANA

ntiff's	Plaintiff's Residence	Tort Location	Plaintiff's Attorney	Type of Court	County Where Case Filed	Cause #	Settlement Status
RD LYLE	NORTH DAKOTA	ROOSEVELT	COLLINS FIRM	USDC	CASCADE	CV-93-123-GF-PGH	
ANNEJHAD AHMAD	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-94-527	
WILLIAM	WYOMING	WYOMING	YAEGER FIRM	STATE	YELLOWSTONE	DV-93-0167	SETTLED
FIELD KENNETH D	WYOMING	WYOMING	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-1034	SETTLED
ON TAY	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-829	
E GARY D	NEBRASKA	WYOMING	ECKMAN FIRM	STATE	CASCADE	BDV-94-040	
HUSON SUSAN/RANDALL	WYOMING	BIG HORN CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-66-BLG-RWA	SETTLED
LO RALPH	WYOMING	WYOMING	HARTELIUS FIRM	STATE	CASCADE	ADV-93-300	
INGS RICHARD E	MISSOURI	MISSOURI	MORRISARD FIRM	STATE	CASCADE	BDV-94-234	
AM ROCKY	NORTH DAKOTA	FALLON CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-225-BLG	
NSON LARRY D	TEXAS	YELLOWSTONE CO. MT	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-1226	SETTLED
PATRICK D	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-94-307	
FLER EDWIN D	WYOMING	WYOMING	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-645	SETTLED
EMPT GARY L	WYOMING	WASHINGTON	DOSHAN FIRM	STATE	CASCADE	ADV-93-798	
ONE BURL	WASHINGTON	WASHINGTON	HOYT FIRM	USDC	YELLOWSTONE	CV-94-097-BLG-JDS	SETTLED
KER ROBERT	WYOMING	WYOMING	BURRIS DON	USDC	YELLOWSTONE	CV-93-115-BLG-JDS	SETTLED
LER NORMAN R	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-0014	
LS JAMES L	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-1241	
RE LAURA L	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-93-423	
KLE JR JAMES A	NORTH DAKOTA	MULTIPLE ND	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-0368	SETTLED
ES COLONEL L	WYOMING	WYOMING	COLLINS FIRM	USDC	YELLOWSTONE	CV-94-36-BLG-JDS	
EISER LESTER	NORTH DAKOTA	MULTIPLE MT/ND	YAEGER FIRM	STATE	CASCADE	CDV-93-892	SETTLED
ATO LOUIE E	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-93-799	
NICK LESLIE	WYOMING	BIG HORN CO. MT	DOSHAN FIRM	STATE	CASCADE	CDV-94-671	
ELL PAMELA M	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	BDV-94-302	
INSON JAMES C	ILLINOIS	SOUTH DAKOTA	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-213	SETTLED
OLO JULIO	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	BDV-93-420	
S ANDREW L	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-607	
UMACHER TERRANCE	NORTH DAKOTA	DAWSON CO. MT	COLLINS FIRM	STATE	CASCADE	ADV-94-314	
RLS MARCUS	WASHINGTON	WASHINGTON	STEPHENSON FIRM	USDC	MISSOULA	CV-93-164-M-CCL	
IG TERRY D	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	ADV-93-520	
A DOMINGO D	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-0285	SETTLED
REIM JEROME M	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-012	
MAS ROBERT A	WYOMING	WYOMING	COLLINS FIRM	USDC	YELLOWSTONE	CV-94-31-BLG-RWA	SETTLED
DELL DEAN A	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-237	
TMAN RANDY L	WYOMING	WYOMING	ROSE FIRM	STATE	YELLOWSTONE	DV-94-323	
NG SAMUEL F	WASHINGTON	WASHINGTON	DEARDEN FIRM	STATE	CASCADE	CDV-93-145	SETTLED

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. #7
DATE 1-18-95
FILE NO. SB63

LAWSUITS FILED IN MONTANA 1993 AND 1994
PLAINTIFFS RESIDENTS OF MONTANA

Plaintiff's Name	Plaintiff's Residence	Tort Location	Plaintiff's Attorney	Type of Court	County Where Case Filed	Cause #	Settlement Status
ANDERSON BARRY	DAWSON CO. MT	DAWSON CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-175-BLG-RWA	SETTLED
ANDERSON IVAN	FLATHEAD CO. MT	WASHINGTON	YAEGER FIRM	STATE	CASCADE	CDV-94-891	
ANDERSON ROGER D	DAWSON CO. MT	DAWSON CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-30	
BARRETT JOHN L	HILL CO. MT	FLATHEAD CO. MT	YAEGER FIRM	STATE	CASCADE	ADV-94-718	
BECK RANDY	FLATHEAD CO. MT	FLATHEAD CO. MT	DEARDEN FIRM	STATE	CASCADE	CDV-93-146	SETTLED
BECK THOMAS L	FLATHEAD CO. MT	FLATHEAD CO. MT	CONNER FIRM	STATE	CASCADE	BDV-93-289	
BERNDT STEVE	VALLEY CO. MT	NORTH DAKOTA	ROSE FIRM	USDC	YELLOWSTONE	CV-93-183-BLG-JDS	
BODNER EUGENE	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-557	
BOOTH RONALD L	SHERIDAN CO. MT	ROOSEVELT	COLLINS FIRM	STATE	CASCADE	ADV-94-115	
BRADFORD JAMES D	FLATHEAD CO. MT	FLATHEAD CO. MT	BRICKER FIRM	USDC	MISSOULA	CV-93-142-M-CCL	
BRIEN FRANK	HILL CO. MT	HILL CO. MT	HARTELIUS FIRM	STATE	CASCADE	CDV-93-506	SETTLED
BROPHY MICHAEL L	DAWSON CO. MT	DAWSON CO. MT	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-1000	SETTLED
BUNNELL BILL	YELLOWSTONE CO. MT	YELLOWSTONE CO. MT	CAVAN FIRM	STATE	YELLOWSTONE	DV-93-0616	
BURGERT DAVID E	FLATHEAD CO. MT	FLATHEAD CO. MT	MCGARVEY FIRM	STATE	FLATHEAD	DV-93-505B	
CAMPBELL WALTER D	BLAINE CO. MT	CASCADE CO. MT	COLLINS FIRM	STATE	CASCADE	CDV-93-391	
CARTER GREGORY A	LINCOLN CO. MT	IDAHO	HARRISON FIRM	USDC	MISSOULA	CV-93-147-M-CCL	
CARTWRIGHT RONALD L	HILL CO. MT	HILL CO. MT	CURE FIRM	STATE	CASCADE	CDV-94-354	
CHURCH WESLEY D	HILL CO. MT	GLACIER CO. MT	HOYT FIRM	STATE	CASCADE	CDV-93-729	
COBB EDWARD	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-93-143	SETTLED
CONVERSE EDWIN F	HILL CO. MT	LIBERTY CO. MT	THUESON FIRM	STATE	CASCADE	BDV-93-392	SETTLED
CORNWELL LYNN & FAY	VALLEY CO. MT	VALLEY CO. MT	HURLY FIRM	STATE	VALLEY	19107	
CRESS KENT	DAWSON CO. MT	DAWSON CO. MT	LEWIS TOM	STATE	CASCADE	ADV-93-443	SETTLED
CURL PAMELA A	DAWSON CO. MT	ROSEBUD CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-94-78-BLG-RWA	
DASSINGER ERNIE	ROSEBUD CO. MT	ROSEBUD CO. MT	HOUTZ JOHN	STATE	ROSEBUD	DV-93-28	
DEES PAUL R	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-526	
DERRY JOHN	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-306	
DOBSON JERALD L	DAWSON CO. MT	DAWSON CO. MT	MORRISARD FIRM	USDC	YELLOWSTONE	CV-94-9-BLG-RWA	
DREW ALLAN E	HILL CO. MT	HILL CO. MT	YAEGER FIRM	STATE	CASCADE	BDV-94-035	SETTLED
DUNNIHOO DALE F	YELLOWSTONE CO. MT	BIG HORN CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-93-496	
ERICKSON KELLY R	HILL CO. MT	HILL CO. MT	HOYT FIRM	STATE	CASCADE	BDV-93-599	
FARMER LEE	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	CDV-93-692	
FEENEY FRANK D	FLATHEAD CO. MT	HILL CO. MT	DEARDEN FIRM	STATE	CASCADE	CDV-94-049	SETTLED
FISHER GARRETT L	HILL CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	ADV-93-640	
FRIEDE MATTHEW M	PONDERA CO. MT	TOOLE CO. MT	HOYT FIRM	STATE	CASCADE	ADV-93-630	SETTLED
FRITZ RICHARD L	CASCADE CO. MT	CASCADE CO. MT	HOYT FIRM	STATE	CASCADE	ADV-94-367	
GOLDEN ROGER	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	ADV-93-769	
GUERRERO SR ROBERT	YELLOWSTONE CO. MT	YELLOWSTONE CO. MT	STEPHENS FIRM	USDC	YELLOWSTONE	CV-94-100-BLG	
HAIGLER EUGENE W	HILL CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	BDV-93-507	
HALL THEODORE ROY	GLACIER CO. MT	GLACIER CO. MT	PRO SE	TRIBAL	BROWNING	94-CA-154	
HANSON ARLEN G	HILL CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	ADV-93-641	
HENDERSON JAMES P	CASCADE CO. MT	PONDERA CO. MT	CONNER FIRM	STATE	CASCADE	BDV-94-170	
HERZOG LARRY	FLATHEAD CO. MT	WEST GLACIER CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-970	
HITCHCOCK ALBERT	MISSOULA CO. MT	MISSOULA CO. MT	STEPHENSON FIRM	USDC	MISSOULA	CV-94-79-M-CCL	
HOLMES JR HAROLD J	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	DV-92-205	
KEYES ROBERT J	CASCADE CO. MT	CASCADE CO. MT	COLLINS FIRM	STATE	CASCADE	CDV-93-476	SETTLED
KLOBOFSKI JOHN	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-758	
KNUDSEN LEONARD	CHOTEAU CO. MT	CASCADE CO. MT	HARTELIUS FIRM	STATE	CASCADE	ADV-93-505	SETTLED
KOVARIK SANDRA	FLATHEAD CO. MT	FLATHEAD CO. MT	HOYT FIRM	USDC	CASCADE	CV-93-130-GF	

Plaintiff's Name	Plaintiff's Residence	Tort Location	Plaintiff's Attorney	Type of Court	County Where Case Filed	Cause #	Settlement Status
SON ROBERT	HILL CO. MT	HILL CO. MT	YAEGER FIRM	USDC	CASCADE	CV-94-63-GF-PGH	SETTLED
ALLE-LOGAN F	HILL CO. MT	TREASURE CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-177-BLG-RWA	SETTLED
KE ROBERT	FLATHEAD CO. MT	WEST GLACIER CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-277	
NEY PATRICK	HILL CO. MT	HILL CO. MT	YAEGER FIRM	STATE	CASCADE	ADV-93-727	SETTLED
RTZ JR FRANK	DAWSON CO. MT	DAWSON CO. MT	DOSHAN FIRM	STATE	CASCADE	CDV-93-048	
WIS DENNIS	FLATHEAD CO. MT	FLATHEAD CO. MT	DEARDEN FIRM	STATE	CASCADE	ADV-94-132	SETTLED
LER PERRY H	HILL CO. MT	TOOLE CO. MT	YAEGER FIRM	STATE	CASCADE	BDV-94-171	
LER PERRY W	BLAINE CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	BDV-93-639	
LLS DENNIS G	FLATHEAD CO. MT	FLATHEAD CO. MT	GROSHONG FIRM	STATE	CASCADE	CDV-93-781	
FLOR JAMES D	CASCADE CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	ADV-93-296	SETTLED
UMANN WALDEMAR	FLATHEAD CO. MT	HILL CO. MT	BRICKER FIRM	USDC	YELLOWSTONE	CV-94-69-BLG-RWA	
EL FREDERICK B	FLATHEAD CO. MT	FLATHEAD CO. MT	DOSHAN FIRM	STATE	CASCADE	ADV-94-304	
VIG DOUGLAS L	VALLEY CO. MT	MULTIPLE MT/ND	BRICKER FIRM	STATE	CASCADE	DV-93-535	SETTLED
ARCY NADINE	FLATHEAD CO. MT	FLATHEAD CO. MT	DEARDEN FIRM	STATE	FLATHEAD	DV-94-187R	
TERS DONALD L	FLATHEAD CO. MT	SHERIDAN CO. MT	THUESON FIRM	STATE	CASCADE	BDV-94-1226	
MBO STAN	CASCADE CO. MT	CASCADE CO. MT	THUESON FIRM	STATE	CASCADE	BDV-94-152	SETTLED
DWOLF REDHORSE ET AL	BIG HORN CO. MT	BIG HORN CO. MT	BELUE FIRM	TRIBAL	BIG HORN	94-31	
CKETT RICHARD P	CUSTER CO. MT	ROSEBUD CO. MT	YAEGER FIRM	STATE	CASCADE	ADV-94-1095	
MMEL GREGORY S	HILL CO. MT	LIBERTY CO. MT	BRICKER FIRM	STATE	YELLOWSTONE	DV-93-201	
PP STEVE	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	ADV-93-306	
HAUB DANIEL J	HILL CO. MT	HILL CO. MT	HARTELIUS FIRM	STATE	CASCADE	CDV-94-998	
HMID RON	PARK CO. MT	PARK CO. MT	KELLER FIRM	USDC	YELLOWSTONE	CV-94-35-BLG-RWA	
HRANTZ DONALD G	MISSOULA CO. MT	DEER LODGE CO. MT	DEARDEN FIRM	STATE	CASCADE	ADV-93-463	SETTLED
LULUND DALE	HILL CO. MT	HILL CO. MT	DEARDEN FIRM	STATE	CASCADE	ADV-94-877	
NUJU BRUCE	TOOLE CO. MT	PHILLIPS CO. MT	COLLINS FIRM	STATE	CASCADE	BDV-93-531	SETTLED
ORG KENT D	FLATHEAD CO. MT	FLATHEAD CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-303	
RINGFIELD WILLIAM	BIG HORN CO. MT	BIG HORN CO. MT	LYNAUGH FIRM	TRIBAL	BIG HORN	94-341	
PRINKLE JONATHAN B	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CDV-93-1018	
IFFARM JOE	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CV-93-045-GF	
ESKE LARRY B	HILL CO. MT	HILL CO. MT	STEPHENSON FIRM	USDC	MISSOULA	CV-94-24-M-CCL	
ESKEY ROBERT P	VALLEY CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	ADV-93-397	
REFTZ ROBERT M	DAWSON CO. MT	MULTIPLE MT/ND	MORRISARD FIRM	USDC	YELLOWSTONE	CV-93-26-BLG-JDS	SETTLED
URNER MARVIN	HILL CO. MT	BLAINE CO. MT	THUESON FIRM	STATE	CASCADE	CV-93-256	SETTLED
ANKLEECK TOM	HILL CO. MT	YELLOWSTONE CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-490	
ICKERS BYRON	DAWSON CO. MT	PRAIRIE CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-224-BLG	
OSEN ROBERT L	HILL CO. MT	HILL CO. MT	BRICKER FIRM	USDC	YELLOWSTONE	CV-93-157-BLG-RWA	
ABER JULIUS	DEER LODGE CO. MT	DEER LODGE CO. MT	JOHNSON FIRM	STATE	SILVER BOW	93-C-424	
AGNER ARCHIE	PHILLIPS CO. MT	NORTH DAKOTA	COLLINS FIRM	STATE	CASCADE	GDV-92-289	SETTLED
ARREN CLIFF	HILL CO. MT	BLAINE CO. MT	THUESON FIRM	STATE	CASCADE	CDV-93-252	SETTLED
EAVER MOLLENE L	VALLEY CO. MT	VALLEY CO. MT	YAEGER FIRM	STATE	CASCADE	CDV-93-303	SETTLED
HITE LARRY E	GLACIER CO. MT	MULTIPLE MT	HARTELIUS FIRM	STATE	CASCADE	CDV-93-737	
WHITFORD DAVID	FLATHEAD CO. MT	FLATHEAD CO. MT	THUESON FIRM	STATE	CASCADE	ADV-94-943	
OUNG ETHAN V	DAWSON CO. MT	DAWSON CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-172-BLG	SETTLED

EXHIBIT
DATE 1-18-95
SB 63

SENATE JUDICIARY COMMITTEE

REPORT NO. 8

DATE 1-18-95

FILE NO. SB 63

AMENDMENT TO SB 63

1. Amend page 1, line 21: Following "its" strike remainder of sentence and insert "resident agent is located as required in § 35-1-313, or the first judicial district."

SENATE JUDICIARY COMMITTEE

REPORT NO. 8

DATE 1-18-95

FILE NO. SB 63

Enacted
SENATE BILL NO. 63

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. # 9

DATE 1-12-95

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PLACE OF TRIAL 5663
FOR A TORT ACTION WHEN THE DEFENDANT IN AN OUT-OF-STATE
CORPORATION; AND AMENDING SECTION 25-2-122, M.C.A"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA

Section 1. Section 25-2-122, MCA, is amended to read:

"25-2-122. Torts. (1) The Except as provided in Subsection
(2), the proper place of trial for a tort action is:

~~(1)~~ (a) the county in which the defendants, or any of them,
reside at the commencement of the action; or

~~(2)~~ (b) the county where the tort was committed. If the
tort is interrelated with and dependent upon a claim for breach
of contract, the tort was committed, for the purpose of
determining the proper place of trial, in the county where the
contract was to be performed.

(2) If the defendant is a corporation incorporated in a
state other than Montana, and if the plaintiff is a resident of a
state other than Montana, the proper place of trial for a tort
action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation does business."

-END-

EXHIBIT NO- 10

DATE 1-18-95

FILE NO. 5663

— orders in chambers,
see Title 25, ch. 20).
place of trial, Rule 1,
5, ch. 21).

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, L. 1867; en. Sec. 25,
Div. Rev. Stat. 1879;
roc. 1895; re-en. Sec.
Sec. 395; re-en. Sec.

itioner, 1985.

ue) of a civil action

t jurisdictional.
ace of trial is not
n any court of this

ater Courts, 3-7-224;

Courts, Title 3, ch. 11,

mall Claims Courts,

persons, Rule 4B,
5, ch. 20).

25-2-113. Power of court to change place of trial. The designation in this part of a proper place of trial does not affect the power of a court to change the place of a trial for the reasons stated in 25-2-201(2) or (3), or pursuant to an agreement of the parties as provided in 25-2-202.

History: En. Sec. 3, Ch. 432, L. 1985.

25-2-114. Right of defendant to move for change of place of trial. If an action is brought in a county not designated as the proper place of trial, a defendant may move for a change of place of trial to a designated county.

History: En. Sec. 4, Ch. 432, L. 1985.

25-2-115. Multiple proper counties. If this part designates more than one county as a proper place of trial for any action, an action brought in any such county is brought in a proper county and no motion may be granted to change the place of trial upon the ground that the action is not brought in a proper county under 25-2-201(1). If an action is brought in a county not designated as a proper place of trial, a defendant may move for a change of place of trial to any of the designated counties.

History: En. Sec. 5, Ch. 432, L. 1985.

25-2-116. Multiple claims. In an action involving two or more claims for which this part designates more than one as a proper place of trial, a party entitled to a change of place of trial on any claim is entitled to a change of place of trial on the entire action, subject to the power of the court to separate claims or issues for trial under Rule 42(b) of the Montana Rules of Civil Procedure.

History: En. Sec. 6, Ch. 432, L. 1985.

25-2-117. Multiple defendants. If there are two or more defendants in an action, a county that is a proper place of trial for any defendant is proper for all defendants, subject to the power of the court to order separate trials under Rule 42(b) of the Montana Rules of Civil Procedure. If an action with two or more defendants is brought in a county that is not a proper place of trial for any of the defendants, any defendant may make a motion for change of place of trial to any county which is a proper place of trial.

History: En. Sec. 7, Ch. 432, L. 1985.

25-2-118. Residence of defendant. Unless otherwise specified in this part:

(1) except as provided in subsection (3), the proper place of trial for all civil actions is the county in which the defendants or any of them may reside at the commencement of the action; *resides in*

(2) if none of the defendants reside in the state, the proper place of trial is any county the plaintiff designates in the complaint; *and the plaintiff is ~~residing~~ in the state,*

(3) the proper place of trial of an action brought pursuant to Title 40, chapter 4, is the county in which the petitioner has resided during the 90 days preceding the commencement of the action.

History: En. Sec. 20, p. 46, Bannack Stat.; amd. Sec. 20, p. 138, L. 1867; en. Sec. 25, p. 31, Cod. Stat. 1871; re-en. Sec. 59, p. 52, L. 1877; re-en. Sec. 59, 1st Div. Rev. Stat. 1879; re-en. Sec. 59, 1st Div. Comp. Stat. 1887; re-en. Sec. 613, C. Civ. Proc. 1895; re-en. Sec. 6504, Rev. C. 1907; re-en. Sec. 9096, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 395; re-en. Sec. 9096, R.C.M. 1935; R.C.M. 1947, 93-2904(part); amd. Sec. 8, Ch. 432, L. 1985; sec. 25-2-108, MCA 1983; redes. 25-2-118 by Code Commissioner, 1985.

course that the State has acquired jurisdiction over the defendant.)

(2) By reason of the Privileges-and-Immunities Clause of the Constitution, a State may not discriminate against citizens of sister States. Art

4, § 2. Therefore Missouri cannot allow suits by non-resident Missourians for liability under the Federal Employers Liability Act arising out of conduct outside that State and discriminatorily deny access to its

*[4] courts to a non-resident who is a citizen of another State. But if a State chooses to "[prefer] residents in access to often over-crowded courts" and to deny such access to all non-residents, whether its own citizens or those of other States, it is a choice within its own control. This is true also of actions for personal injuries under the Employers Liability Act. *Douglas v. New York, N. H. & H. R. Co.* 279 US 377, 387, 73 L ed 747, 751, 49 S Ct 355.

Whether a State makes such a choice is, like its acceptance or rejection of the doctrine of forum non conveniens, a question of State law not open to review here.

But, (3), a State may reject the doctrine of forum non conveniens in suits under the Federal Employers Liability Act because it may deem itself compelled by federal law to reject it. Giving the opinion of the Supreme Court of Missouri in these cases a scope most favorable to reliance on a non-federal ground, doubt still remains whether that Court did not deem itself bound to deny the motions for dismissal on the score of forum non conveniens by its view of the demands of our decisions in *Baltimore & Ohio R. Co. v. Kepner*, 314 US 44, 86 L ed 28, 62 S Ct 6, 136 ALR 1222, and *Miles v. Illinois Cent. R. Co.* 315 US 698, 86 L ed 1129, 62 S Ct 827, 146 ALR 1104.

But neither of these cases limited the power of a State to deny access

to its courts to persons seeking recovery under the Federal Employers Liability Act if in similar cases the State for reasons of local policy denies resort to its courts and enforces its policy impartially, see *McKnett v. St. Louis & S. F. R. Co.* 292 US 230, 78 L ed 1227, 54 S Ct 690, so as not to involve a discrimination against Employers Liability Act suits and not to offend against the Privileges-and-Immunities Clause of the Constitution. No such restriction

is imposed upon the States merely because the Employers Liability Act empowers their courts to entertain suits arising under it. There was nothing in that Act even prior to § 1404 (a) of the 1948 revision

*[5] of the Judicial Code, title 28, USC, which purported "to force a duty" upon the State courts to entertain or retain Federal Employers Liability litigation "against an otherwise valid excuse." *Douglas v. New York, N. H. & H. R. Co.* supra (279 US at 388, 73 L ed 752, 49 S Ct 355).

Therefore, if the Supreme Court of Missouri held as it did because it felt under compulsion of federal law as enunciated by this Court so to hold, it should be relieved of that compulsion. It should be freed to decide the availability of the principle of forum non conveniens in these suits according to its own local law. To that end we

Headnote 4 vacate the judgment of the Supreme Court of Missouri and remand the cause to that Court for further proceedings not inconsistent with this opinion. *State Tax Com. v. Van Cott*, 306 US 511, 83 L ed 950, 59 S Ct 605; *Minnesota v. National Tea Co.* 309 US 551, 84 L ed 920, 60 S Ct 676; *Herb v. Pitcairn*, 324 US 117, 89 L ed 789, 65 S Ct 459, 325 US 77, 89 L ed 1483, 65 S Ct 954.

Judgment vacated.

Mr. Justice Jackson, concurring.

¹ Section 1404(a) reads, "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other dis-

trict or division where it might have been brought." See *Ex parte Collett*, 337 US 55, 93 L ed 1207, 69 S Ct 944, 959, 10 ALR2d 921.

45 USCS § 55, n 51

RAILROADS

Purvis v Pennsylvania R. Co. (1950, DC Pa) 96 F Supp 698.

Question of validity of release executed by employee should be permitted to go to jury; withdrawal of this question from jury constitutes reversible error. *Pacific E. R. Co. v Dewey* (1949) 95 Cal App 2d 69, 212 P2d 255.

52. Summary judgment

Defendant was not entitled to summary judgment based on defense of accord and satisfaction where allegations of complaint set forth serious injuries sustained by plaintiff, and stated that

consideration for release executed by plaintiff was \$100 which claim agent said was wages. *Kiloski v Pennsylvania R. Co.* (1951, DC Del) 96 F Supp 321.

Issue as to material fact precluding summary judgment for railroad is raised by evidence that at time that plaintiff entered into settlement with railroad and signed release, which settlement almost exclusively represented plaintiff's wages for time lost from employment, neither plaintiff nor railroad claims agent contemplated that plaintiff had suffered permanent and disabling injury. *Holmes v Missouri K. T. R. Co.* (1978, Okla) 574 P2d 297.

§ 56. Actions; limitation; concurrent jurisdiction of courts

No action shall be maintained under this act [45 USCS §§ 51 et seq.] unless commenced within three years from the day the cause of action accrued.

Under this act [45 USCS §§ 51 et seq.] an action may be brought in a circuit [district] court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this act [45 USCS §§ 51 et seq.] shall be concurrent with that of the courts of the several States.

(Apr. 22, 1908, ch 149, § 6, 35 Stat. 66; Apr. 5, 1910, ch 143, § 1, 36 Stat. 291; Aug. 11, 1939, ch 685, § 2, 53 Stat. 1404; June 25, 1948, ch 646, § 18, 62 Stat. 989.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed word, "district" is inserted on authority of Act Mar. 3, 1911, ch 231, §§ 289, 291, 36 Stat. 1167, which appears as 28 USCS §§ 430 and 430a which transferred the powers and duties of the circuit courts to the district courts.

Amendments:

1910. Act Apr. 5, 1910 added "Under this Act an action may be brought in a circuit court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this Act shall be concurrent with that of the courts of the several States, and no case arising under this Act and brought in any state court of competent jurisdiction shall be removed to any court of the United States."

1939. Act Aug. 11, 1939, substituted "three years" for "two years".

EXHIBIT 10

DATE 1-18-95

SB 63

EMPLOYERS' LIABILITY

1948. Act Jun (Act) deleted 'state court of the United States'

Venue of district Change of venue State court action

Am Jur:

9A Am Jur 2d
20 Am Jur 2d
32 Am Jur 2d
§§ 58, 60, 63,
32 Am Jur 2d
36 Am Jur 2d

Am Jur Trial
Selecting the
Solving Statute
Litigation Un
Trials, p. 397.

Am Jur Proo
Liability Und
119.

Forms:

9 Federal Pro
27:15, 27:18,
14 Federal P
15 Federal P
Time Limits
8 Am Jur L
nastion Acts,
11 Am Jur
Compensatio

Annotations:
Tolling 3-ye
Liability Act
Equitable es
Ed 2d 1886.
State's powe
ble under Fl
Local law a
ers' Liability

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SENATE JUDICIARY COMMITTEE
EXHIBIT NO. #11
DATE 1-18-95
BILL NO. SB-63

January 18, 1995

Sen. Bruce Crippen, Chair
Senate Judiciary Committee
Room 325, State Capitol
Helena, MT 59620

RE: Senate Bill 63

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to Senate Bill 63, which benefit out-of-state corporations at the expense of Montana citizens.

Background. Burlington Northern Railroad has repeatedly challenged Montana's current venue statute in both the Montana and U.S. supreme courts. BN has never succeeded. Now the Montana Supreme Court is preparing to issue yet another opinion in a legal challenge by BN.

- In 1991, then-Attorney General Marc Racicot filed a brief with the U.S. Supreme Court successfully defending Montana's current venue statute against the latest legal attack from BN. He was joined in his brief by the states of Wyoming, North Dakota, South Dakota, New Mexico, and Texas. Here's what he said:

"Montana law evinces a legitimate and real reason for permitting broader venue against foreign corporations than against domestic corporations." Amicus brief in *BN v. Ford*, No. 91-779, page 14.

"In the first instance, subjecting a foreign corporation to suit in a county in which it does business promotes the legitimate State policy to make its courts accessible to injured persons *and to hold accountable a corporation which avails*

itself of the privilege of doing business in the State." Amicus brief in *BN v. Ford*, No. 91-779, page 13.

"... the state is not able to give its citizens the same assurance of effective redress for injuries committed by foreign corporations as it can in the case of domestic corporations." Amicus brief in *BN v. Ford*, No. 91-779, page 13, citing another U.S. Supreme Court decision.

"... a foreign corporation need not have a principal place of business within the State of Montana and, if it does have one, need not identify it in any document filed with the Secretary of State. It is reasonable to expect, therefore, that a plaintiff seeking to choose a venue in which to file suit against the foreign corporation would have difficulty determining where, if at all, the corporation maintains its principal offices within the State. Moreover, since the corporation may select any of its places of business as its registered office, it may in fact have its principal offices elsewhere than the county housing its registered office." Amicus brief in *BN v. Ford*, No. 91-779, page 15.

- The U.S. Constitution prohibits states from discriminating against the *citizens* of another state. States can, however, reasonably discriminate against the *residents* of other states.

- Federal law, not Montana law, makes BN virtually the *only* out-of-state corporation which must defend itself in a state court selected by the plaintiff. Other out-of-state corporations. Other out-of-state corporations can already escape any lawsuit filed in state court simply by moving that lawsuit into federal court--and they almost always do.

- BN complains often about "out-of-state railroaders" who file lawsuits in Montana courts, especially in Great Falls and Billings. Some of those railroaders, however, are actually Montana *citizens* who happen, at the time of an accident, to be *residents* of surrounding states. In fact, BN itself can control the residence of its workers and frequently transfers Montana workers to other states. Other Montana citizens who commonly must surrender their residence (at least temporarily) in a Montana county include construction workers, students who attend college out of state, and elderly Montanans who enter nursing homes.

- Many so-called "out-of-state railroaders" actually obtain most or all of their medical treatment in one of Montana's regional health-care centers such as Billings, Great Falls, or Missoula.

- Faced with constitutional realities; intent on shielding itself from a handful of its own out-of-state employees; and attempting to attract political support from other out-of-state corporations, BN has drafted a bill which seriously disadvantages more than

800,000 Montana citizens.

Senate Bill 63. Although this bill technically amends Sec. 25-2-122, MCA (which actually provides fewer options for so-called "forum shopping" than BN's amendment), SB 63 really operates to amend Sec. 25-2-118, MCA.

- SB 63 dramatically impacts all Montana citizens who must resort to court, *not just individuals*. Small Montana businesses, too, would be severely disadvantaged whenever a large out-of-state corporation forced them into court over such varied wrongful business conduct as franchise disputes, debt-collection methods, and even damage to the good names and reputations of Montana businesses. In fact, the State of Montana itself would suffer the same disadvantages.

- SB 63 dramatically impacts many legal proceedings other than personal-injury lawsuits. The bill restricts other types of legal challenges against out-of-state corporations, including:

- (1) insurance companies which abuse their policyholders;
- (2) out-of-state manufacturers whose defective vehicles or machines or chemicals injure Montana citizens or damage their property; and
- (3) out-of-state banks which defraud their customers.

- Most obviously, SB 63 would force many Montana individuals and businesses to fight out-of-state corporations in their own backyard, in the "company towns" where those corporate giants exert the most influence. Not only BN but also powerful out-of-state mining companies, out-of-state timber companies, out-of-state oil companies, out-of-state banks, out-of-state construction companies, and the like would thus benefit from SB 63.

- Less obvious, perhaps, but equally prejudicial, SB 63 would force many more Montana individuals and businesses to fight out-of-state corporations in courts with less, not more, connection to the lawsuit. By injecting an artificial "county line" mentality in Montana statutes, SB 63 ignores the economic and geographical realities of Montana life, especially *rural* Montana life. For example:

- (1) In Lewis and Clark County, SB 63 would force an Augusta business or individual to fight any legal battle in a faraway Helena court rather than in Great Falls or Choteau, which are much closer in both distance and economic ties.

- (2) In Jefferson County, SB 63 would force a Whitehall business or individual to fight any legal battle in Boulder rather than Butte, which is often much more accessible and relevant.

- (3) In Big Horn County, SB 63 would force a Pryor business or individual to fight any legal battle in Hardin rather than in Billings, which is closer, more accessible, and often more relevant.

- (4) In eastern Roosevelt County, SB 63 would force a Froid or Culbertson

business or individual to fight any legal battle in Wolf Point rather than in Sidney or Plentywood.

(5) In Carter County, SB 63 would force a Hammond business or individual to fight any legal battle in Ekalaka rather than Broadus, which is both closer and more accessible.

Proposed amendment. If this committee finds it necessary to prohibit so-called "forum shopping" by non-residents, and if this committee finds it necessary to protect out-of-state corporations from being sued in Montana counties which have no connection to the lawsuit, then you can easily amend SB 63 to avoid the worst injustices of the bill.

MTLA suggests the following amendment at line 21 of SB 63:

"(c) the any county in which the corporation has its principal place of does business."

This amendment would protect BN and all other out-of-state corporations from having to defend themselves in counties where they do not exercise the privilege of doing business. At the same time, this amendment would preserve the precious right of generations of Montana individuals and businesses to hold out-of-state corporations accountable wherever they do business.

If MTLA can provide more information or assistance to the Committee, please notify me. Thank you again for this opportunity to express MTLA's opposition to Senate Bill 63.

Respectfully,

A handwritten signature in black ink, appearing to read "Russell B. Hill". The signature is fluid and cursive, with the first name "Russell" being more prominent and followed by "B Hill".

Russell B. Hill
Executive Director

Mr. Chairman, Members of the Committee, I'm Fran Marceau, United Transportation Union State Legislative Director, and I ask you to oppose Senate Bill 63.

Montana has a long and proud history of fostering the rights of the common man and of railroad workers in particular. Senate Bill 63 would blemish that history by changing state venue laws to benefit foreign, non-resident corporations, at the expense of average Montana citizens and workers.

Throughout this century, through an unbroken chain of decisions of the Montana Supreme Court, it has been recognized that a foreign corporation has no Montana residence for venue purposes, and can be sued in any county selected by a citizen of this state. In 1985, this was formally codified by the Montana legislature. This law has served the citizens of this state well, and good reason does not exist to change it.

Montana's venue law, in fact, is one of the few venue statutes to have been examined by the United States Supreme Court in recent years. The Supreme Court found it to be fundamentally fair and reasonable, and held that it did not impose undue hardship on foreign corporations. In that 1992 decision, the Supreme Court recognized that inconvenience to a foreign corporation will not significantly vary if that foreign corporation has to defend in Billings as opposed to Havre, for example, and held that a non-resident corporation's interest in convenience is too slight to outweigh the interest of an injured citizen in suing in the forum of his choice.

Indisputably, the right to selection of forum is a critically important one to injured citizens and workers in this state. Any Montana citizen who is injured by the negligence or recklessness of a large non-resident corporation already has an uphill battle. The private citizen may arm himself only with the services of an attorney, while the corporation can bring to bear vast sums of money and a large army of lawyers to oppose him. To deny injured Montana citizens the forum of their choice is to afford one more tactical advantage to these non-resident, foreign corporations.

There are, of course, good and proper reasons why an injured citizen of this state might want to sue in a county other than that of his residence, where the accident occurred, or where the corporation claims to have its principal place of business. Litigation will frequently center where an injured plaintiff

receives his basic medical treatment; in many instances this will necessarily occur in a major metropolitan location, even if the plaintiff resides, and the accident took place, outstate. Trial will frequently center upon the testimony of these medical experts. At present, Montana citizens have the right to take this into account when determining where to bring suit. Under Senate Bill 63, this right would be taken away from them. The cost of bringing medical doctors to a distant trial for an injured individual would be a real hardship and would often result in loss of live medical testimony for injured residents of this state.

Senate Bill 63 would also afford non-resident, foreign corporations an unfair advantage when the citizens of this state are injured as a result of so-called "toxic torts." In recent years, for example, there has been a significant amount of litigation on behalf of injured railroad workers who have suffered asbestosis and related injuries as a result of their exposure to asbestos dust while working for the railroad. These workers reside in different counties across the state, and were similarly injured in different counties throughout Montana. Under the present venue law, it was possible to consolidate the bulk of these cases in a single forum because of the right of citizens of this state to sue non-resident corporations in any county of their choosing. This resulted in major savings to the taxpayers of this state. If this had not been possible, smaller district courts in Montana would have been literally overwhelmed through repetitive, complicated, time consuming litigation. Such would be the result of Senate Bill 63.

It cannot be emphasized enough that Senate Bill 63 would result in a major wasting of judicial resources in this state. At present, the venue law regarding non-resident corporations is clear and is not the subject of legal battles. Under this bill, it can be expected that foreign corporations will attempt to claim smaller, rural counties as their principal place of business, under the belief that such counties will return smaller verdicts to the injured citizens and workers of this state. Repeated court battles over what county constitutes a foreign corporation's true principal place of business can be expected, with unnecessary cost to taxpayers and unnecessary legal expense to this state's injured citizens.

Moreover, should a foreign corporation claim a small, out-state county as its principal place of business, the limited judicial resources of that county could be completely overwhelmed as a result of the claimed presence of that single company, even though that corporation does significant business throughout the entire state.

Senate Bill 63 would also significantly impede the rights of railroad workers in this state. Injured railroad workers are not covered by state workmans' compensation, but by a Federal law known as the Federal Employers' Liability Act. Under the Act, railroad workers can sue a railroad in any Federal district where the railroad does business or maintains a line of rail. At

present, the Montana court system affords injured Montana railroad workers this same fundamental right. The United States Supreme Court has recognized that the right of an injured railroad worker to select his legal forum is a critical one which must be protected. Senate Bill 63 would, in a very real sense, eliminate this right in the Montana courts, to the detriment of all railroad workers who live here.

In our society, the right to seek legal redress in the courts is a fundamental one and one of the highest and most essential privileges of citizenship. Senate Bill 63 seeks to fix something which is not broken, and would unnecessarily erode the practical legal rights of the citizens of Montana, and burden the courts of this state.

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DATE 1-18-95
SB 63

BEFORE THE MONTANA SENATE
JUDICIARY COMMITTEE

TESTIMONY WITH RESPECT TO
SENATE BILL 63

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 1-18-95
BILL NO. SB63

Helena, Montana
January 18, 1995

My name is David Ditzel, I represent the Brotherhood of Locomotive Engineers here in Montana, our members are employed on Burlington Northern and Montana Rail Link railroads.

Rail workers do not participate in any work comp system, and under Federal law when they are injured on-the-job, they must seek redress in the courts for their injuries. Presently, workers may file their claim in any of the various State District courts or Federal courts here in Montana. Additionally, workers who have had injuries while working on the job outside the State may file claims in the State of Montana regardless whether they are residents of the State of Montana.

The legislation before you today deals with this matter and the so-called venue issue. A bill similar to the one before you has been introduced in the last three sessions at the behest of Burlington Northern and has been rejected by the legislature each time. Burlington Northern has also been to the US Supreme Court over the present standing Montana venue law.

It is obvious that BN wants a change made in the venue

law, and in fact, in this version of the bill before you today, BN has asked for and gotten language that uses a "sledge hammer" approach, which when applied in law would affect many more people than the limited number of out-of-state rail workers who file tort claims that BN wishes to restrict.

Indeed, the language contained in the present bill would restrict all Montanans in their ability to file tort claims, and more specifically it would affect our members in the State. For example, if a railworker who lived in Glendive, and was injured in Glendive, but due to the serious extent of his injuries had most if not all of his medical treatment in Billings were to then file a tort claim, he would have to file in Glendive and bear the extra expense of having the expert witnesses travel out of Billings to Glendive to appear before the court.

We have members as do the Maintenance of Way who routinely take temporary work assignments outside the State of Montana--some as far away as Texas to work for BN. Should they be hurt in say Texas, this bill would limit their ability to get equitable access to the courts.

In BN's attempt to reduce or eliminate claims from non-resident out of state rail workers, it will not work a hardship on in-state rail workers who should have not have to see their rights restricted.

Senate Bill 63 - D. B. Ditzel Testimony
page 3

EXHIBIT 13
DATE 1-18-95
SB 63

Our preference would be to see this bill killed at best, and if not, certainly amended to maintain the rights of in-state rail workers, and current residents who might be temporarily working out of state at the time of their injury. .



MONTANA STATE SENATE

Senator Steve Doherty
Senate Minority Whip
Senate District 24
1531 3rd Ave SW
Great Falls, MT 59404

A handwritten signature in black ink, reading "Steve Doherty".

It is said that Senate Bill 63 is against the public good, that it benefits only the Burlington Northern Railroad Company and that it hurts Montanans. Because of these claims, I have decided to set forth my position on this bill in writing.

As I read the pertinent statutes, they currently allow Montanans to file lawsuits against non-resident corporations in any county of the state. According to the uncontradicted testimony we heard, this legislature passed this venue law close to a century ago to assure that Montanans had a chance for a fair trial when they were injured by an out-of-state corporation. Some of our communities were then dominated by out-of-state interests. If the injured person had to sue the corporation in a company town, he or she had a difficult time obtaining a fair trial. The jurors, fearing retribution by the corporation, might vote against the injured citizen, even though he or she was right. Therefore, to prevent this from occurring, we have always allowed Montanans to sue out-of-state corporations in any county of the state, rather than limiting them to communities where the corporation had great power.

Senate Bill No. 63 would change this. Rather than allowing Montanans to sue a non-resident corporation in any county of the state, it would funnel most lawsuits against the

corporation into the communities where the corporation had its greatest power. At the beginning of the hearing on this bill, Senator Crippen stated the change was necessary because out-of-state plaintiffs were suing out-of-state corporations in Montana courts, even though the events leading to the lawsuit occurred outside the state. He stated that by limiting the venues where out-of-state corporations could be sued, these out-of-staters would be deterred from bringing lawsuits in Montana courts.

There seems to be no dispute that Senate Bill No. 63 was drafted by the Burlington Northern Railroad. BN presented evidence that it had been sued in Montana courts many times by people who were not residents of Montana and who had been injured outside of the state. The lawsuits they listed were all by injured railroad workers, who have a federally created right to sue the railroad in any state where it is "doing business." The undisputed evidence is that the Burlington Northern is the only out-of-state corporation facing this situation. No other corporations testified they were subject to this special law that allows out-of-staters to sue in Montana courts. Thus, Senate Bill No. 63 does appear to be specifically designed to directly benefit Burlington Northern.

Neither the opponents nor the proponents seriously doubted that Senate Bill No. 63 would accomplish its stated objective. It probably would discourage out-of-state injured railroad workers from suing Burlington Northern in our state courts. As such, to some degree it would diminish the case loads imposed upon our courts and the associated financial costs.

The problem with Senate Bill No. 63 is that, as written, it also would harm Montanans. A lot of Montanans, of course, work for the Burlington Northern Railroad too. When they are injured, they currently have a right to file their lawsuit for damages against the railroad in any county of the state. Senate Bill No. 63, however, would funnel most of their lawsuits into communities where Burlington Northern has considerable influence and power--primarily Hill County, where Burlington Northern has its principal place of business. Thus Senate Bill No. 63 would undo the protection this legislature gave to Montana citizens many years ago so they would not have to face an unfair trial in a company town where the jury would be afraid of the corporation.

Because of this, I must oppose Senate Bill No. 63. I cannot in good conscience vote for a bill that hurts Montanans.

This bill, which benefits only the Burlington Northern, and hurts many Montanans is against the public interest. One had only to look at the people testifying at the hearing to recognize this. Virtually all of the people who spoke on behalf of this bill represented out-of-state corporations and interests. Virtually every person who spoke against the bill was either a Montana citizen or a citizen organization, speaking on behalf of Montanans.

If, however, this committee believes that our venue laws have to be modified because of overcrowding due to suits by non-residents, I would support a modified version of Senate Bill No. 63. Specifically, Senate Bill No. 63 currently limits a plaintiff's venue when he files a suit against a non-resident corporation. If the committee would entertain an amendment, which would

make this limitation apply only when the plaintiff, also, is a non-resident, then the modified would have my reluctant support. At least then, the bill would not hurt Montana residents.

Such a modification would be constitutional. We have been presented with legal briefs showing that both the United States Supreme Court and the Montana Supreme Court have recognized that a state has the power to do this. There have been no legal authorities presented to us to the contrary.

One of the proponents of the bill, a representative of Noranda Mining, a non-resident corporation, gave a second purported basis for passing Senate Bill No. 63. Specifically, he stated that a non-resident corporation should not be subject to a lawsuit away from the county where it has its principal place of business in the state. I do not see any basis for his position. If an out-of-state corporation can place a business in Montana, it certainly can reach the courthouses in Montana as well. At any rate, every non-resident person or corporation has a right to have a lawsuit removed to Federal Court, if the suit is filed in a Montana state court. The single exception is the Burlington Northern Railroad.

Nevertheless, if the committee feels that Noranda has a valid point, it, too, can be addressed with a simple modification of the bill--without seriously damaging the rights of Montanans. The modification would simply allow the lawsuit against the non-resident corporation to be filed in any county where the corporation is "doing business." "Doing business" can be defined as any county where the corporation has an office, real property, and/or pays taxes.

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DATE 1-18-95
SB 63

In this way, the corporation would not be subject to a suit in a county far from its home base simply because of an isolated business transaction. I do not recommend this modification. Some Montanans would still be affected. But at least it will harm less Montana citizens than what is being suggested by the unabridged version of Senate Bill No. 63.

In summary, Senate Bill No. 63 should be opposed. It is a bill designed solely to benefit the Burlington Northern Railroad. It will force both Montana residents and non-residents to file claims against the Burlington Northern primarily in a county where the railroad has immense influence.

My obligation is to the people of Montana--not non-resident corporations. Therefore, I cannot possibly support this bill.

COMMENTS ON SENATE BILL 63

By John C. Hoyt

January 13, 1995

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. #15
DATE 1-18-95
BILL NO. SB 63

I am the president of the Montana Chapter of the American Board of Trial Advocates (ABOTA). ABOTA is an organization comprised equally of attorneys representing plaintiffs and defendants in controversies which may be resolved by a trial by jury.

ABOTA is dedicated to the preservation of our jury system. In one guise or another, our jury system is under attack everywhere by special interests who don't want people they can't control to decide a controversy on a level playing field.

ABOTA is comprised of lawyers with a great deal of legal and trial experience. That is a requisite to become a member and the composition of ABOTA is carefully maintained in balance.

Senate Bill 63 is a crude disguise on the part of the Burlington Northern Railroad Company to thwart the will of the Congress of the United States which passed the Federal Employers Liability Act nearly 90 years ago. This act requires an employee of a railroad who is injured while working for the railroad to bring a lawsuit directly against his employer. Under the Federal Act, a BN employee injured because of the fault of the BN may bring his claim for damages in any of the federal courts in

Montana and because the BN is an out-of-state corporation, he may bring his claim in any state court as well. This is what the BN wants the Montana Legislature to change.

The Federal Employers Liability Act (FELA) was designed by the Congress of the United States to make it easier for an injured railroad worker to recover damages for injuries he may sustain in the course of his employment if the railroad is at fault. The amount of the recovery is reduced by the amount of the negligence of the employee himself.

There is no workers' compensation coverage for an injured railroad worker. His only remedy is to file his suit if he cannot effectuate a settlement. When a settlement cannot be reached, then his case must be tried to a jury. The wisdom involved in permitting the injured employee to choose his place of trial is to provide the employee with an opportunity to choose a forum where he may get a fair trial before a jury, rather than permitting the railroad to dictate the place of trial as is the BN's purpose behind this bill.

The BN has railroad operations in many rural Montana counties where it knows its employees may be injured. It claims its principal place of

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DATE 1-18-95
SB 63

Comments on Senate Bill 63
January 16, 1995
Page 3

business is at Havre. In all injury cases, both treating doctors and specialists in the medical profession must testify in order to properly advise a jury of the extent of the injuries sustained by the railroad worker in the course of his employment with the BN. The specialists necessary to provide a fair trial before a jury are located in the major cities in Montana. Usually it is a virtual impossibility to get specialists in the field of medicine or otherwise to travel to the small rural county seats in Montana and when they will consent to do so, the charges are astronomical. This often prevents an injured Montana railroad worker from even getting to trial in many instances.

It may be even more onerous to compel a Montana resident who is injured while working for the BN to have to bring his claim for damages against the railroad in Havre where the BN's presence is overwhelming and many people live in fear of offending the BN. How then could an injured railroad worker expect to obtain a fair trial in Havre?

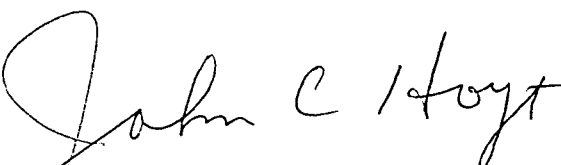
The sole premise of ABOTA is the preservation of a fair and equitable jury system. Contrary to the claims of many special interests an impartial jury is the only assurance of a true workable civil justice system

Comments on Senate Bill 63
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Page 4

and jurors should be drawn from a panel of unbiased citizens and trials held where the evidence can be presented.

In the case of injured Montana railroad workers, it is essential that Senate Bill 63 not be enacted into law.

Respectfully submitted,



John C. Hoyt
President Montana Chapter
American Board of Trial Advocates

JCH:jld



Montana State AFL-CIO

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624

Donald R. Judge
Executive Secretary

406-442-1708

January 20, 1995

Senator Bruce Crippen, Chair
Senate Judiciary committee
Room 325, State Capitol
Helena, MT 59620

SB
63

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. #16
DATE 1-18-95
SUB NO. 63

Dear Senator Crippen:

Given the brevity of the January 18 hearing on Senate Bill 63 before your committee (limits on testimony afforded only enough time to offer the name of our organization and state our opposition to the measure), I thought I'd take this opportunity to express in more detail our organization's concerns about this legislation.

First, we want to make it perfectly clear that we believe that this bill was crafted for and introduced for the primary benefit of the Burlington Northern Railroad. Workers have faced repeated attempts by this large out-of-state corporation to restrict their rights to selection of venue in cases against this giant. Those attacks on venue have not only occurred in the Legislature, but also in our state's and our nation's highest courts ... and all have been soundly, and repeatedly, rejected.

We believe that there has been good reason to reject the BN's efforts to limit venue selection. Clearly, the courts have determined that BN does not have a legal leg to stand on. And, just as clearly, the Montana Legislature has consistently determined that granting the BN this privilege would be to the disadvantage of Montana citizens.

Now, following a political shakeup to which the BN contributed and believes to be in its advantage, this huge out-of-state corporation is seeking, once again, to gain advantage over Montanans through the legislative process. This time, however, the BN has pulled together an impressive list of allies who also seek to gain advantage over average Montanans. Your record of proponents will show an array of individuals representing large, out-of-state corporations involved in mining, timber, construction, oil, and corporate defense attorneys. In addition, the Montana Chamber of Commerce offered its support on behalf of these corporate giants, we believe, to the detriment of Montana's main street businesses.

As you heard from the bill's opponents, SB 63 seeks to limit venue in tort actions against out-of-state corporations to three choices: (1) the county in which the tort was committed; (2) the county in which the plaintiff resides; or (3) the county in which the corporation has its principal place of business. Although a number of amendments were offered to change, or perhaps just clarify, these limitations, we don't believe that any of them fully address our concerns.

The committee should note that this legislation doesn't just address the concerns of the Burlington Northern. Even though Federal law allows non-rail corporations to move any case filed against them from state to federal courts, there may be advantage to corporations having such actions heard in state courts, instead. That would be especially true if said corporations were able to limit venue to choices which reflect counties in which said corporations have significant economic interests. As you heard from the opponents, impartiality of jurors considering guilt and levels of damages certainly becomes an issue when the community in which said jurors live is substantially, economically dependent upon the operations of the defendant corporation. We agree.

Senator Bruce Crippen
Page Two
January 20, 1995

Taking this issue out of the realm of the BN, consider it's potential impacts on Montana corporations, main street businesses, farmers and ranchers and non-rail working men and women. SB 63 also limits their venue selection in tort actions against out of state corporations. What about the rancher who has a claim against an out-of-state corporate cattle buyer? There may be reasons, in rural Montana, why this rancher would like to file his case in a court not located in his county. They might include access to counsel, distance from the court location, personal disputes with local judges or community relations, availability of witnesses, etc. What if the claim involves product liability tort against an out-of-state producer of veterinary supplies?

This bill also affects Montana businesses in much the same way. Claims for non-payment of bills, defective products, non-delivery of goods, insurance fraud, misrepresentation of products purchased, etc., etc., etc., would be limited as to venue.

For individuals, and government, such claims could include non-payment of wages, workers' compensation and unemployment compensation taxes, failure to complete contracted services, fraudulent misrepresentations, and much more. SB 63's venue limitations could make things very inconvenient in Montana's more rural counties, especially where we find out-of-state contractors crossing our borders to build homes, businesses, schools, roads, public facilities, and more. Imagine, if you will, the independent logger who files suit against an out-of-state timber giant in the county where the economic stability of the community itself depends upon the whims of the corporation? What about the miner, rancher, landowner, or other affected individual who has reason to file a tort against the large out-of-state corporate mining company (many of which are actually foreign owned corporations)?

Isn't it the responsibility of the Montana Legislature to stand up for the rights of Montana citizens, rather than those of these huge out-of-state corporations? We believe so.

It was clear from the hearing that this issue is one of Montana citizens, main street businesses, workers and others against the interests of large out-of-state corporations. Although some may attempt to portray SB 63 as simply a fight between corporate and plaintiff attorneys ... nothing could be further from the truth. The issue is how this Montana legislature will respond when asked to choose between protecting the rights of its citizens versus the greed of large out-of-state corporations? We hope you'll decide with the interests of Montanans and reject Senate Bill 63.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Don Judge", with a large, stylized loop at the end.

Don Judge
Executive Secretary

cc: All members of the Senate Judiciary Committee

DATE 1-18-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
John Allen	MT Defense Trial Lawyers	63	X	
Jim Jensen	MEIC	63		X
Russell B Hill	MTLA	563		✓
Erik Thven	Self	563		X
John Holmes	SELF			X
Steve Sapp	"			X
Mike Lamb	"			X
Dor Judge	MT STATE AFL-CIO	563		X
Don Allen	MT. Genl. Indus. Ag.	563	✓	
Jerry Enisell	MT State Building Trades	563		✓
Frank Marceau	UTU	563		✓
Ed Caples	MSCA	563		✓
Melissa Luse	HERE	563		✓
Alle Thompson	MT Def. Trial Lawyers	563		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1 - 18 - 95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 63, SB 113, SB 123

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
David Ditzel	Bro. of Locomotive Engrs	63		X
Jeff Sherlock	District Judges	113		
Les Beatty	BNRR	63	X	
Dean Roberts	Deputy Justice	113	X	
Zander Blewett	Self	63		X
Kelly Erickson	Self	63		X
Jim Tutwiler	MT CHAMBER	63	X	
Russ Ritter	Kasler Holding	63	X	
Craig Reed	IMHP	113		
Jacqueline Denmark	Am. En. Assoc	123		X
Jacqueline Denmark	Am. En. Assoc.	63	X	
John Spasch	ST Auditor	63		X
GARY LANGLEY	MONTANA MINING ASSN.	63	X	
MARK PETERSMEIJER	NORANDA MINERALS	63	X	

John Fitzpatrick Pegasus Gold Corp 63 X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By ACTING CHAIRWOMAN LINDA NELSON, on January 23, 1995, at 10:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 127, SB 174
Executive Action: SB 63, SB 64, SB 127

HEARING ON SB 127

Opening Statement by Sponsor:

SENATOR AL BISHOP, Senate District 9, presented SB 127 which he is carrying at the request of the Judicial Unification and Finance Commission. This Commission was created by the 53rd Legislature. This bill would provide that the District Court Criminal Reimbursement Program pay for expenses incurred in state district court for postconviction relief hearings, habeas corpus proceedings and also the appeals from those proceedings. This fund comes from the 2% tax on light vehicles. Seven percent of that tax is appropriated to the Supreme Court to reimburse

Motion: SENATOR BARTLETT moved to AMEND SB 66.

Discussion: Valencia Lane explained amendments nos. 1, 3, 4, 5, 9, and 10 remove "robbery" and "arson" from the bill. Amendment 7 makes it clear that for medical purposes the inmate could be moved to a hospital facility. Amendment 2, 6, and 8 deal with the exception clause in the bill.

Vote: The motion CARRIED on oral vote with SENATOR BAER voting "NO".

Motion: SENATOR ESTRADA moved SB 66 DO PASS AS AMENDED.

Discussion: SENATOR GROSFIELD questioned whether this bill presents complications in terms of going to a prison in another state, a federal prison or to a privatized prison.

SENATOR HALLIGAN stated that if the bill states Montana State Prison there may be a conflict with sentencing guidelines which state the defendant is to be sentenced to either the Montana State Prison or the Department of Corrections. SENATOR HALLIGAN further expressed his concern about creating a geriatric ward. Valencia Lane stated the amendment was added to state that inmates could be moved for medical reasons. Page 1, line 25, also refers to an exception as provided in 46-23-210 which is the medical parole statute. SENATOR HALLIGAN also commented that he has two newspaper articles which explain that states who had adopted the two strikes law had greatly underestimated the impact on their corrections budget.

SENATOR GROSFIELD expressed his concern in the situation where there are two felonies which occur at the same time. He would like to make sure the two strikes were for separate occurrences.

SENATOR BAER feels that robbery and arson should not have been taken out of the bill. These are two seriously dangerous violent felonies which often result in a felony murder situation.

{Tape: 2; Side: A}

EXECUTIVE ACTION ON 63

Motion: CHAIRMAN CRIPPEN MOVED TO AMEND SB 63.

Discussion: CHAIRMAN CRIPPEN explained his amendment. EXHIBIT 5 The proper place for the trial of a tort action, when the defendant is a corporation incorporated in a state other than Montana, is the county in which the tort was committed, the county in which the plaintiff resides, or the county in which the corporation's resident agent is located or in the first judicial district.

SENATOR DOHERTY stated he also had a couple of amendments. In reference to SENATOR CRIPPEN'S amendment, he stated that most

resident agents for out-of-state corporations contract with CT Corporation which provides registered agent service for out-of-state corporations. The practical result of **SENATOR CRIPPEN'S** amendment is that these trials would all be in the first judicial district. This would greatly increase the workload of the first judicial district. This is done in the case of other statutes because they are of statewide concern. This out-of-state corporation could resolve all of this by simply becoming a Montana corporation. His amendment would substitute language that states, "where the corporation owns property".

SENATOR HALLIGAN asked Zander Blewett to respond to **SENATOR CRIPPEN'S** amendment. Mr. Blewett explained that this amendment would allow the corporation to pick an agent to receive service which would mean they could pick any county in the state to decide where they wanted to be sued. Under federal law, injured railroad workers are allowed to chose any county. Burlington Northern is trying to switch that around so they can choose the county.

SENATOR CRIPPEN stated there is a problem with forum shopping within the state. He looks at this from the standpoint of reasonableness. **SENATOR DOHERTY'S** amendment would give the plaintiff three choices: the county where the tort was committed, the county where the plaintiff resides, or a neutral area. This bill will put a restriction on forum shopping but it is still giving the plaintiff some opportunity. He feels the proposed amendment tightens it up and meets some of the objections.

SENATOR JABS commented that this amendment gave them a fourth option. Mr. Blewett stated that **SENATOR CRIPPEN** had been told by the BN where the BN thinks it will do better. The employee is forced to sue his employer. The federal law forces him to do this, and now the BN wants to force the employee to either sue in the company town or to go to Helena where the BN feels it is going to do much better.

Leo Berry stated that this bill, if the amendment were adopted, would provide four alternatives for the plaintiff to sue. The employee has another option. The case could still be filed in federal court in Billings, Great Falls or Helena. Cases probably should be filed in federal court because they are dealing with federal law, protections and benefits.

SENATOR HOLDEN stated that if you have a weak case, you shouldn't be allowed to disregard the people in your community.

Vote: The motion **CARRIED** on roll call vote with **SENATORS NELSON, BARTLETT, BISHOP, DOHERTY, and HALLIGAN** voting "NO".

Discussion: **SENATOR DOHERTY** announced that he had an amendment to handout, **EXHIBIT 6**. He did not hand out the amendment referred to earlier.

Motion: SENATOR DOHERTY MOVED TO FURTHER AMEND SB 63.

Discussion: SENATOR DOHERTY explained the amendment. Following "Montana" he inserted "and if the plaintiff is a resident of a state other than Montana,". The purpose of this amendment deals with people from out of state who are using our court system. If someone comes into Montana in order to file a lawsuit, the non-resident corporation and the out-of-state individual stand on the same footing. Adoption of this amendment would provide protection to Montana citizens.

SENATOR CRIPPEN stated that what the amendment is doing is already there. The way the language is now written, the proper place for the trial is the county in which the tort was committed. We are saying that this exception only applies to a resident of another state.

SENATOR HALLIGAN asked Mr. Berry if he agreed with Mr. Blewett's interpretation of the Missouri v. Mayfield case in that states can discriminate against out-of-state residents. Mr. Berry asserted that it was difficult to answer that question with any precision. The Missouri case was a forum non conveniens case not a venue case and the courts were left with discretion as to whether the principle should apply to out-of-state residents. If this is placed in the statute, it would jeopardize the fundamental principles of the bill.

SENATOR DOHERTY explained that his amendment is for out-of-state residents. In this instance, if Burlington Northern wants to forum shop, it will be able to forum shop. It will be able to chose its agent in whatever community it wants or it can remove those cases to federal court.

Vote: The motion FAILED 6-4 on roll call vote.

Motion: SENATOR CRIPPEN moved SB 63 DO PASS AS AMENDED.

Discussion: SENATOR DOHERTY submitted a legal brief for the record, EXHIBIT 7. This legislation attempts to overturn several Supreme Court decisions. It overturns the feeling of Governor Marc Racicot concerning Montana's venue statute which states that Montana courts should be open to Montanans. This bill, as now amended, will allow forum shopping by defendant Burlington Northern. This is special interest legislation for the Burlington Northern Railroad. Although the legislation is broadly written, it affects only one entity. That entity is the Burlington Northern Railroad. It is bad policy to favor out-of-state corporations over Montana citizens.

SENATOR CRIPPEN expounded that he disagreed that we were favoring out-of-state corporations over Montana citizens. It is easy to look at Burlington Northern as a big, bad person. They are still corporate citizens doing business in this state. They still fall under the laws of the state and they are entitled to the

protection of the laws of this state. Any person that is residing and doing business in this state has the opportunity to come before this legislative body with its concerns. We adopted the Micron proposal for Butte. That is going to benefit Butte as well as indirectly benefit the entire state. This bill will provide a basis for avoiding forum shopping against a citizen of our state.

Vote: The motion CARRIED on roll call vote with SENATORS NELSON, BARTLETT, BISHOP, DOHERTY, and HALLIGAN voting "NO".

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL

DATE _____

1-23-95

[illegible]

SEN:1995

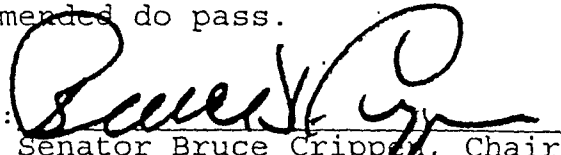
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 23, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 63 (first reading copy -- white), respectfully report that SB 63 be amended as follows and as so amended do pass.

Signed: 

Senator Bruce Crippen, Chair

That such amendments read:

1. Page 1, line 21.

Strike: "corporation has its principal place of business"

Insert: "corporation's resident agent is located, as required by law, or in the first judicial district"

-END-

 Amd. Coord.

 Sec. of Senate

191354SC.SRF

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1/23/95 BILL NO. SB 63 NUMBER 1

MOTION: Motion to Amend SB 63
Crippen Amendment

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER	✓	
SUE BARTLETT		✓
AL BISHOP, VICE CHAIRMAN		✓
STEVE DOHERTY		✓
SHARON ESTRADA	✓	
LORENTS GROSFIELD	✓	
MIKE HALLIGAN		✓
RIC HOLDEN	✓	
REINY JABS	✓	
LINDA NELSON		✓

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1/23/95 BILL NO. SB63 NUMBER 2
MOTION: Doherty move to Amend SB63

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN		✓
LARRY BAER		✓
SUE BARTLETT		
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY	✓	
SHARON ESTRADA		✓
LORENTS GROSFIELD		✓
MIKE HALLIGAN	✓	
RIC HOLDEN		✓
REINY JABS		✓
LINDA NELSON	✓	

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1/23/95 BILL NO. SR 63 NUMBER 2

MOTION: DPA A

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER	✓	
SUE BARTLETT		✓
AL BISHOP, VICE CHAIRMAN		✓
STEVE DOHERTY		✓
SHARON ESTRADA	✓	
LORENTS GROSFIELD	✓	
MIKE HALLIGAN		✓
RIC HOLDEN	✓	
REINY JABS	✓	
LINDA NELSON		✓

SENATE JUDICIARY
Exhibit # 5
DATE: 1/23/95
Bill # SB 63

Amendments to Senate Bill No. 63
First Reading Copy

Requested by Senator Crippen
For the Committee on Judiciary

Prepared by Valencia Lane
January 22, 1995

1. Page 1, line 21.

Strike: "corporation has its principal place of business"

Insert: "corporation's resident agent is located, as required by
law, or in the first judicial district"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. #6
DATE 1/23/95
BILL NO. 5863

Amendments to Senate Bill No. 63
First Reading Copy

Requested by Senator Doherty
For the Committee on Judiciary

Prepared by Valencia Lane
January 21, 1995

1. Page 1, line 17.

Following: "Montana."

Insert: "and if the plaintiff is a resident of a state other than
Montana,"

The following research is provided to assist the committee with a question that was raised during the hearing on Senate Bill No. 63.

I. LEGAL ISSUE AND ANSWER.

The question is:

To prevent court overcrowding, can Montana refuse to entertain tort claims by non-resident plaintiffs against non-resident corporations?

The answer is clearly "yes" under both United States Supreme Court and Montana law.

II. MONTANA HAS THE RIGHT TO REFUSE TO ENTERTAIN A TORT CLAIM ARISING OUT OF CONDUCT OUTSIDE MONTANA, INCLUDING CLAIMS IN FELA ACTIONS.

1. The United States Supreme Court. The identical issue was presented to the United States Supreme Court in Missouri v. Mayfield, 340 U.S. 1 (1950). The plaintiff was a railroad worker, who sued his employer in Missouri. "The accident, which gave rise to the claim of liability for negligence, took place outside Missouri." 340 U.S. at 2-3. The railroad company was not a resident of Missouri.

The United States Supreme Court held that Missouri had the power to refuse to accept the case. It stated:

If the state chooses to "prefer residents in access to often overcrowded courts" and to deny such access to all non-residents, whether its own citizens or those of other states, it is a choice within its own control. This is true also of actions for personal injuries under the Employers' Liability Act.

EXHIBIT NO. 17
DATE 1/23/95
FILE NO. SB 63

340 U.S. at 3-4.¹ Applying these definitions and the Mayfield ruling, Montana is entitled to deny access to "non-resident" plaintiffs who were injured outside of Montana without violating constitutional principles.² Constitutional law does not "force a duty upon the state courts to entertain or retain Federal Employers' Liability litigation against an otherwise valid excuse." Mayfield, 340 U.S. at 5. "Preferr[ing] residents in access to often overcrowded courts" is a "valid excuse." Mayfield, supra.

2. Montana Cases on This Issue. The issue of railroad workers who have been injured outside of Montana and have filed their lawsuits in Montana courts has been the topic of several Montana cases. The most recent case, Ford v. Burlington Northern, ____ Mont. ____, 819 P.2d 169 (1991), has been approved and affirmed by the United States Supreme Court, ____ U.S. ____, 119 L.Ed.2d 432 (1992).

In the Montana cases, our court has recognized that non-resident railroad workers are entitled to bring their claims against the Burlington Northern in Montana only because federal law gives them a right to sue a railroad in any state where the railroad is "doing business." Since BN is "doing business" in Montana, railroad workers from out of state can sue it here.

¹It is important to note that the United States Supreme Court is making a distinction between "residents" and "citizens." A person who claims Montana citizenship, but is residing outside Montana, "non-resident."

²The Committee will find additional authority for this point in Howlett v. Rose, 496 U.S. 356, L.Ed.2d 332, 110 Sup.Ct. 2430 (1990), where the United States Supreme Court reviewed Mayfield, supra, its two other cases addressing the issue of when a state court can refuse "to entertain a federal causation."

This "policy favoring the injured railroad worker's choice of forum [is] highly persuasive" and makes the doctrine of *forum non conveniens* inapplicable. LaBella v. Burlington Northern, 182 Mont. 202, 595 P.2d 1184 (1989); see Bevacqua v. Burlington Northern, 183 Mont. 237, 598 P.2d 1124 (1979). Railroad workers are entitled to choose their venue based upon the "strong national policy favoring a plaintiff's selection of forum in actions brought under the Federal Employers' Liability Act. Ford v. Burlington Northern, supra. at 175.

In most of these cases, however, the Montana Supreme Court has repeatedly stated that even though the non-resident railroader's choice of forum is important, it can be outweighed by Montana's interest in preventing overcrowding of local courts. See e.g., LaBella, supra; Bevacqua, supra. It has reserved the right to re-examine the situation and in fact, our court is currently doing that right now in a case before it. Thus, the Montana Supreme Court has recognized its power to deny access to non-residents if our courts are becoming overcrowded because of their lawsuits against the BN.

To summarize, neither the United States Supreme Court nor the Montana Supreme Court has ever concluded that a state cannot bar non-residents from using the state's courts. In fact, the courts have said just the opposite. The United States Supreme Court has expressly stated that a state can bar access to non-residents for suits against non-resident corporations. Mayfield v. Missouri, supra. Our own court has already recognized it has

the power to do just that, if the non-resident suits start overcrowding our courts. LaBella, supra, Ford, supra.

Therefore, if this legislature determines that non-resident suits are in fact clogging and overcrowding our courts, it can correct the problem without harming the rights of residents of Montana. Montana residents can retain the right to sue non-resident corporations away from communities where the corporation can exert considerable influence over the trial. Senate Bill No. 63 need only indicate that it applies when both parties to the lawsuit are non-residents. In this way, Montanans' rights will not be lessened.

SENATE BILL NO. 63

INTRODUCED BY CRIPPEN, ANDERSON, CLARK, FISHER, SIMON, TASH, ORR, DEVANEY, SOFT,
KEENAN, HANSON, BARNETT, STOVALL, HAYNE, SIMPKINS, HIBBARD, JENKINS, CURTISS, TOEWS,
BOHLINGER, MESAROS, BENEDICT, GRADY, T. NELSON, TVEIT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PLACE OF TRIAL FOR A TORT ACTION WHEN
THE DEFENDANT IS AN OUT-OF-STATE CORPORATION; AND AMENDING SECTION 25-2-122, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-2-122, MCA, is amended to read:

"25-2-122. Torts. (1) The Except as provided in subsection (2), the proper place of trial for a tort
action is:

(1)(a) the county in which the defendants, or any of them, reside at the commencement of the
action; or

(2)(b) the county where the tort was committed. If the tort is interrelated with and dependent upon
a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of
trial, in the county where the contract was to be performed.

(2) If the defendant is a corporation incorporated in a state other than Montana, the proper place
of trial for a tort action is:

- (a) the county in which the tort was committed;
- (b) the county in which the plaintiff resides; or
- (c) the county in which the corporation has its principal place of business corporation's resident
agent is located, as required by law, or in the first judicial district."

-END-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on March 10, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: None

Members Absent: Rep. Duane Grimes

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 63, SJR 10, SJR 12
Executive Action: SJR 12 BE CONCURRED IN

{Tape: 1; Side: A}

HEARING ON SB 63

Opening Statement by Sponsor:

SEN. BRUCE CRIPPEN, SD 10, described SB 63 as a bill to revise the place for a tort action when the defendant is an out-of-state corporation. He said this bill would deal directly with the concept of venue shopping. In Montana out-of-state corporations which are doing business in the state can be sued in Montana even though the accident occurred out of the state and the plaintiff lives out of the state. He said the proper place for the filing of a tort action is the county in which the defendants reside or the county where the tort was committed. This bill would provide that an out-of-state corporation can be sued in the county in which the tort was committed, the county in which the plaintiff resides, the county in which the corporation's resident agent is located or in the first judicial district.

The sponsor pointed out that railroads are under the Federal Employers' Liability Act (FELA) which is a fault system. Railroad employees are not under the state's workers compensation program which is a no-fault system. FELA states that litigation can be filed in state court or in federal court. He said the provisions of this bill would not restrict their options at all.

Proponents' Testimony:

Mark Petersmeyer, Noranda Minerals Corporation, added some remarks to his written testimony. EXHIBIT 1 He said the aim of SB 63 is to end discrimination against out-of-state companies so that they would be treated like Montana corporations in a tort case. He said this is not a railroad issue or a big corporation issue, but it is simply a fairness issue. He said that an argument is that a plaintiff would never get a fair shake in a company town because juries aren't willing to award plaintiffs a large sum of money which might jeopardize a major source of jobs. He was skeptical that a company like Noranda would have that kind of influence in Lincoln County.

Another argument holds that out-of-state companies can always remove the lawsuit to federal court. He said this might be true for some companies and some situations; the company he represents does not have that option. The fact that their principal place of business is in Montana means that they could never meet the standard of diversity needed to remove a case to a federal court. He said this was not the point, that even if they were able to petition to the court for removal, it would not justify discrimination at the state court level.

He said the opponents were motivated by a desire to continue to treat out-of-state companies different from everyone else because

they are not organized in Montana. They should be able to argue venue before a state court judge like everyone else.

Ward Shanahan, Attorney representing Stillwater Mining Company, said the company he represents is a Delaware Corporation while the president and principal place of business are in Nye, Stillwater County, Montana. They supported SB 63.

John Alke, Montana Defense Trial Lawyers Association, stated support of this bill. He said the reason for their support was straightforward in that they do not believe that either party to a lawsuit should be able to "forum shop." The current status of the law is that if an out-of-state corporation is a defendant, the plaintiff gets to forum shop.

He described a recently-settled Burlington Northern (BN) case. He said that the Montana Supreme Court held as a matter of constitutional law that an out-of-state FELA plaintiff cannot be denied access to the Montana courts. The bill does not do that, but it does say where in the state the action can be brought. He said SB 63 complies with that supreme court case and it is fair.

Leo Berry, Attorney representing Burlington Northern (BN), illustrated for the committee the impact of the current law on BN. He said the second two pages of the illustration demonstrated lawsuits against out-of-state corporations by residents of Montana being filed in any of the 56 counties of Montana. During 1993 and 1994, 72 Montana resident cases had been filed in Montana and 62 of them were filed in Cascade County. Of those 62, he said that 55 had absolutely nothing to do with that county. **EXHIBIT 2**

He said that this bill would provide six different places to bring a lawsuit, including the federal court in Cascade County. He said that is often the proper place to file a suit because they are generally filed under FELA which is a federal act. In filing in federal court, it would relieve a portion of Montanans' tax burdens.

He said the opponents had proposed an amendment which would restrict the out-of-state cases. His interpretation of the recent Montana court case was that if the amendment were added, it would be the same as "killing" the bill because he believed that the court case decided in favor of forum shopping in Montana and it is okay to bring those cases in from out-of-state. He encouraged the committee to pass the bill unamended.

Jim Mockler, Montana Coal Council, appeared in support of SB 63. He said he believed it was an issue of fairness and not a BN issue.

Don Allen, Montana Wood Products Association, supported SB 63. He discussed some of the complications in the shipping of materials and interstate trucking under the current system.

Russ Ritter, Conda Mining and Envirocon, Inc. of Missoula, rose in support of SB 63.

Frank Crowley, Attorney for ASARCO, Inc., spoke in favor of SB 63. ASARCO is a New Jersey corporation and though forum shopping is not a current issue for them, they wanted to go on record as strongly supporting the bill because without passage of it, ASARCO would remain vulnerable to the same problem of forum shopping that other out-of-state corporations experience. He said it is a basic procedural fairness bill and there is no fundamental basis in policy or law to have a venue bill discriminate against out-of-state corporations. He submitted articles from Montana newspapers in support of SB 63. **EXHIBIT 3**

Jacqueline Lenmark, American Insurance Association (AIA), commented that the range of interested proponents demonstrated that this is not just a railroad issue but an issue of fairness for all defendants and asked for favorable action on the bill.

David Owen, Montana Chamber of Commerce, said that in his research he had seen that there was a trend from big vertical companies to small companies connected through a nexus of contracts back and forth. He said that if the state were to continue to treat out-of-state companies with a different standard of justice from those which are in-state, they would be creating an inhibited ability in the future to reach out of state for those contracts and would leave some of the third wave economic base in the state liable. He felt the bill would correct that and put the state on a good course.

Informational Testimony:

Blake Wordal, Lewis and Clark County Commissioner, said they neither supported nor opposed the bill, but asked for an amendment by striking the last six words of the bill which indicated the first judicial district. He said they feel it is unfair to single out the first judicial district because they are all civil court case whose costs are paid by Lewis and Clark County taxpayers. He said he understood from debate on the Senate floor that the sponsor would not oppose that amendment.

Opponents' Testimony:

Don Judge, AFL-CIO, said that only the big businesses were represented on the side of the proponents while there were none representing the average business person or the average citizen. He said they believed the bill was brought primarily by BN and specifically in relation to the problems they were having related to FELA.

He said it was not unusual to live on the edge of a county and be closer to another major metropolitan area which would be the center of the courts and medical and legal attentions. He firmly believed that this bill was in the interests of wealthy, moneyed

and powerful out-of-state corporations who are doing venue shopping. He said they are asking to be allowed to limit the venue of the rights of Montanan's whether small business people, ranchers, workers or farmers to sue tort claims against out-of-state corporations. He encouraged defeat of SB 63.

CHAIRMAN CLARK relinquished the chair to **VICE CHAIR SHIELL ANDERSON**.

Erik Thueson, Attorney at Law, expressed that his greatest fear about this bill was that the members of the committee had their minds made up. He presented a chart to demonstrate the history behind his opposition to the bill. He said that the law that provided that a Montana citizen could sue in any county grew out of a concentration of influence from the Butte/Anaconda area of about 70 years ago. He said that the current proposal would limit that time-honored right. He presented evidence to support his view that this was primarily a BN bill. He said he did not believe that there was evidence that there had been lawsuits which had caused out-of-state corporations to go to inconvenience in a distant county in order to defend a suit.

On his chart, he sought to demonstrate that there was a major difference between BN and all other out-of-state corporations in that BN is subject to FELA while the others are under a federal law which protects them if they think the county they are being sued in is not appropriate. This is called federal removal which allows a case to be moved to the federal court closest to the base of operation or where the injury occurred. The practical effect is that is what the corporations do in 99% of the cases currently. He described how he believed big corporations get around the venue issue presently. Because of this, he said that this bill was written specifically for BN to try to create a special venue law for themselves. He presented a copy of the previously mentioned supreme court case as part of his argument against SB 63. He also submitted to the committee a document designed to answer all questions concerning SB 63 as well as a fact sheet he compiled on the issues being discussed.

EXHIBITS 4, 5 and 6

He said that his law firm had circulated a petition to try to determine from Montanan's who would be affected by this bill what their response would be. Over 300 signatures were gathered in a few days with 250 of those signatures from Havre protesting SB 63. **EXHIBIT 7**

In addressing the issue of forum shopping, he said that out-of-state attorneys who are bringing lawsuits into the state are introducing bad practices into the state. He said he has filed a lawsuit against one of them in order to stop those practices. His concern was that in an effort to make a better civil justice system, they would be punishing the people to whom the civil justice system belongs. He said that the Montana Supreme Court had said in their recent ruling, "with regard to you, Burlington

Northern, because of the Federal Employers' Liability Act, there is a strong public policy that the railroad worker is the one that is entitled to choose the place of trial rather than the railroad." He quoted that the court said, "We have found highly persuasive the policy favoring the injured worker's choice of forum. We recently re-emphasized our commitment to the strong national policy favoring a plaintiff's selection of forum in actions brought under FELA. The FELA choice of forum simply cannot be denigrated to a secondary position....."

He said the end result of the bill would fund a great majority of the railroad cases into Havre. Those 250 Havre residents who signed the petition would know that they would not have a fair chance to trial because of the intimidation of the influence of BN in that area. He said it was an attempt to negate the decision and the federal public policy that the railroad worker, not the railroad, would chose the place where the trial is to be held.

If the committee would chose to pass the bill, he proposed some of the ways to salvage the bill to meet some objectives the committee might have. Passage of the bill unchanged favoring BN would be unconstitutional and he stated the reasons.

{Tape: 1; Side: B; Comments: The balance of the testimony is continued on Side B.}

He felt that it would be declared unconstitutional because was it was an attempt on the part of the BN to do away with the policy upheld by the recent court case that the railroad worker is entitled for good reasons to choose the place of trial. He believed the court would say that it is not rational to allow the railroad to use the arm of the government to negate the public policy that the railroad worker has the right to choose the place of trial. Legislation which negates public policy is not constitutional.

He suggested that they could change the proposal to simply say they could file suit where the out-of-state corporation is doing business. He said that was the same language the federal law uses. He suggested another way to alter the bill for passage was to add another section which would state that if the defendant were an interstate railroad company, the plaintiff is entitled to sue him in any county where the railroad is doing business. He said that would make the bill constitutional.

John Kutzman, Attorney, said the vast majority of his practice has been representing injured railroad workers. He said the committee should be considering the potentially crippled railroad workers as the true opponents of the bill though they were not represented because they were not anticipating injury. He reviewed EXHIBIT 6 in rebuttal of proponents' testimony. He thought the committee should weigh the fact that many of the corporations incorporate in other states like Delaware because

those courts have developed corporate law and have expertise in corporate matters. He refuted the suggestion that the cases should be sent to federal court to bear the costs. But he said the federal law specifically grants the injured worker the choice of filing in state or federal court.

He said the bill would do nothing to discourage people from bringing out-of-state FELA cases into Montana. He researched about FELA cases which had been heard by the Montana Supreme Court in the last five years. Of the ten he found, a number were not truly FELA cases and only four were appeals of FELA cases actually tried. He thought this was important to consider in light of the proponent's testimony that FELA cases pose a great burden on the courts of Cascade County. He added personal testimony to refute the contention of the burden on those courts. If the bill were adopted, the cases would move to Havre where there is only one judge versus the three judges in Great Falls who have developed a great deal of expertise in dealing with FELA claims.

Fran Marceau, United Transportation Union State Legislative Director, opposed SB 63 in written testimony and furnished the committee with a copy of a news article of March 6, 1995.
EXHIBITS 8 and 9

Dave Ditzel, Brotherhood of Local Locomotive Engineers, said they were asking for the same rights as the railroad company to sue where they are doing business. He said he wanted to bring attention to the fact that the courts had confirmed the special circumstance that railroad workers have to file their suits anywhere the railroad does business. He also referred to and distributed copies of **EXHIBIT 4**.

Mike Quinn, United Transportation Union, rose in opposition to SB 63.

Informational Testimony:

EXHIBIT 10 is included in opposition to SB 63.

EXHIBIT 11 was submitted following the hearing in presenting further arguments in rebuttal and explanation by **Mr. Thueson**.

EXHIBIT 12 registered Montana Trial Lawyers' Association's opposition to SB 63.

{Tape: 1; Side: B; Approx. Counter: 22.7.}

Questions From Committee Members and Responses:

REP. WILLIAM BOHARSKI asked if there was an explanation for the majority of the cases being heard in Cascade County.

SEN. CRIPPEN said the numbers of cases filed in Cascade County was an interesting point but did not state a reason.

REP. BOHARSKI asked for an explanation of the testimony that the majority of the people listed lived and had their injury in Hill County and yet their cases were filed in Cascade County. He said he counted only four who lived and had sustained their injury in Hill County while two-thirds of the cases were filed in Cascade County. He referred to EXHIBIT 2 in his questions.

Mr. Thueson said they file them in Cascade County mainly because there are three judges there who know FELA law. Other reasons include Great Falls being the major medical community in the northern part of the state. Most of his clients "doctor" there and it is an advantage to the client because they can bring those doctors for live testimony to trial. They don't file in Hill County because of the pervasive influence of the railroad.

REP. BOHARSKI asked Mr. Alke the same question. He referred the question.

Mr. Berry answered that there was a perceived advantage for filing in Cascade County. He did not know if it was a real advantage. Many of the firms represented were out-of-state law firms who preferred to file in Cascade County either because of the juries or judges there. He had estimated the cost on a normal FELA case at about \$7,000 per trial.

CHAIRMAN CLARK resumed the chair.

REP. AUBYN CURTISS followed up on EXHIBIT 2 by asking if they were all railroad cases.

Mr. Berry said they were all railroad cases on the list.

REP. CURTISS asked if the Thueson Firm listed was a Montana firm.

Mr. Thueson replied that they were his clients and affirmed that it is a Montana firm.

REP. CURTISS asked the sponsor if it was true that there are certain types of cases which by law must be filed in the first district court.

SEN. CRIPPEN said there were.

REP. CURTISS asked if there had been much effort recently in changing the venue for those particular cases.

SEN. CRIPPEN answered, "Not to my knowledge."

REP. DEB KOTTEL clarified the company represented by Mr. Shanahan and that it was incorporated in Delaware and further clarified that corporations can have dual citizenship.

Mr. Shanahan said that depending on federal court procedures that was correct.

REP. KOTTEL asked if the corporation he represented had any operations in Delaware.

Mr. Shanahan said Delaware had several tax and securities features which traditionally were more favorable and Delaware had tailored its laws to attract corporate headquarters. So, many corporations had headquarters there while doing business elsewhere.

REP. KOTTEL re-asked if the corporation had no active business in Delaware, but chooses Delaware to incorporate because it is known to have pro-management corporate laws on its books and there is an advantage to the corporation to do that.

Mr. Shanahan said that was right.

REP. KOTTEL asked if the corporation could have chosen to incorporate in Montana.

Mr. Shanahan said it could have but it had another organizational structure and is now an independent public corporation and was a joint venture with a California and Colorado corporation.

REP. KOTTEL asked Mr. Allen if he represented a wood products corporation which is incorporated and headquartered in another state, but its only operations are in Montana.

Mr. Allen said that was correct.

REP. KOTTEL asked if this corporation chose not to incorporate in Montana even though their only business is in Montana.

Mr. Allen said they were originally headquartered in California and it remains there, but within the last two years had sold off their other mill operations.

REP. KOTTEL re-asked the question.

Mr. Allen said their whole structure had changed. It started out in another state, they simply had not changed it because it has only been three or four months since they sold the last mill in another state.

REP. KOTTEL asked if he knew of any plans to change to their articles of incorporation to the state of Montana.

Mr. Allen said they were in the process of trying to sell it to someone else at the present time.

REP. KOTTEL discussed the beginnings of FELA as being because the work life of railroad workers was so drastically shortened by their jobs.

Mr. Judge said that he did not understand it that way. He said he understood FELA came about because of the type of job the workers had which currently put them in exchange from state to state across the country and unless they belonged to a workers compensation system which was established in each of the states they operated in, they needed to go to something more standardized for the workers.

REP. KOTTEL asked if it was correct that railroad workers are subject to relocate at any time.

Mr. Judge said that from his perspective that was correct.

REP. KOTTEL asked the sponsor if this was a BN bill.

SEN. CRIPPEN answered, "This bill deals with all out-of-state corporations. This is my bill....."

REP. KOTTEL stated, "Because railroads are under special federal statutes and there is historically a reason for allowing increased rights of venue, would you consider it a friendly amendment to exclude railroads from SB 63 and therefore SB 63 would deal with the problem of out-of-state corporations and I think that would clearly make it constitutional under the Montana State Supreme Court. Would you consider that a friendly amendment?"

SEN. CRIPPEN said he would not and REP. KOTTEL asked him why not.

SEN. CRIPPEN asked, "Why?"

REP. KOTTEL stated these reasons:

1. Because we have a federal statute, FELA, which was put in place because of unequal bargaining power between the parties, and
2. Because of the recent supreme court decision which talks to the issue of railroad workers and the right to have open venue across the state.

She asked, with those reasons, what the problem would be to exclude the railroad from the bill.

SEN. CRIPPEN said the problem was simply one of fairness.

REP. KOTTEL referred to the list of lawsuits filed in Montana (EXHIBIT 2) and asked if the sponsor was familiar with it. He had seen it, but was not familiar with it.

REP. KOTTEL asked Mr. Berry for details on the list's headings as referring to the federal court location.

Mr. Berry said they had wanted to make a distinction between federal and state courts.

REP. KOTTEL asked, "So when you are looking at the vast number of cases having to do with filed in Cascade County, this bill would in no way affect those cases filed before the federal district court in the sense that these people would not....."

Mr. Berry answered, "Under FELA they are entitled to file in state or federal courts and they could continue to file in federal court if they so chose."

REP. KOTTEL said she saw a number of settlement status as "Settled." She concluded from that there is no cost to the county for a trial and they were sometimes settled following the filing of the complaint.

Mr. Berry said the majority of civil cases in their entirety including FELA cases are settled before they go to trial. There are costs associated with filing which are very hard to calculate.

REP. KOTTEL said they did not hear from the eighth judicial district or county commissioners asking to be eliminated. She asked if they would consider it a friendly amendment to substitute the word, "eighth," for "first."

Mr. Berry said he would not.

REP. KOTTEL asked, "Why?"

Mr. Berry responded that he had the same question, "Why?"

REP. KOTTEL answered, "Because you'd want to limit what you say might be harassment techniques of pulling out-of-state corporations all over the state of Montana; you want to have venue in set locations and so you put the first judicial district as an alternative. Let's put the eighth in; that appears to be where many of the lawsuits are currently filed, it does limit the range of venue so it does all the things that the first judicial district does except (1) the first judicial district doesn't want it and (2) the eighth judicial district is not opposed to having those cases. That's the why."

Mr. Berry said the first judicial district was added for only one reason. The original drafting of the bill would reveal that it mentions the principal place of business which is commonly the determinant for residency. "The opponents of the bill said that was too limiting, that the principle place of business of BN would be Havre. So I suggested that the county of the resident agent, which most out-of-state corporations use CT Corp. which is

in Helena--I believe they have an office in Billings also--to receive service. The opponents said, 'That's well and good, but you will be a resident to Havre or Ekalaka, where it would be unfair.' So I said let's pick an impartial place commonly used by the legislature in the first judicial district." That's how the first judicial district was included.

REP. KOTTEL asked if he was saying that they just chose the first if they were impartial. She asked why they didn't chose the eighth, "or don't you feel they are not impartial."

Mr. Berry said he did not say that, but had said that the first judicial district is commonly used by the legislature in many other parts of the code and that was why it was chosen, for consistency purposes.

REP. KOTTEL asked, "It's not mandated by law to use the first judicial district, is it?"

Mr. Berry asked if she was talking about the plaintiff or the legislature.

REP. KOTTEL answered, "The legislature."

Mr. Berry responded, "No, the legislature determines the venue."

REP. KOTTEL clarified that they were talking about venue and not jurisdiction so that any judicial district has jurisdiction.

Mr. Berry affirmed that they were talking about venue.

REP. ANDERSON asked Mr. Berry to address the testimony that this bill would be unconstitutional because it is public policy to allow those people to bring their case in any forum.

Mr. Berry disagreed with that characterization of the case [the supreme court case]. He saw the case in just the opposite way in that filings cannot be restricted by non-Montana citizens in the way that Mr. Thueson stated. He said that the case which was referred to was a common-law principle, Forum Non Conveniens, which means a court can move a case if they think it is not a good place to have the trial. In the particular case referred to, the court said Forum Non Conveniens was not applicable to it or to other cases. He said that Montana is the only state he was aware of that utilizes that principle. Most states when faced with the kinds of things seen on the list (EXHIBIT 2) would grant a motion called a Forum Non Conveniens and put the case in its proper venue. The Montana courts have said that under the Montana Constitution an out-of-state corporation can be sued anywhere in the state. He cited how cases which involved an injury in Colorado being filed in Nebraska where a motion to Forum Non Conveniens was filed. Then Nebraska kicked it out saying it was a Colorado case and then it was filed in Cascade

County in Montana and the courts in Montana will not kick those kinds of cases out.

REP. ANDERSON asked him to address the claim that the nonrailroad corporations can have the venue changed.

Mr. Berry said that was true if there was complete diversity. In most of the cases they have experienced, the plaintiff just merely adds a Montana citizen or an employee of the company to thwart the diversity argument and then the case cannot be removed to a federal court.

REP. ANDERSON pointed out that the Thueson Law Firm was listed on 15 of the cases filed in the last two years. Seven of those came from Hill County and the rest from other counties were all filed in Cascade County. He asked Mr. Thueson, "Is it not true that you filed those in Cascade County because you felt the outcome would be more advantageous to you and the plaintiff in that county?"

Mr. Thueson said he understood that REP. ANDERSON was saying that he had a personal stake in it and so was trying to defeat it because of that.

REP. ANDERSON said he was asking if he felt he would get a better outcome in Cascade County.

Mr. Thueson answered, "Yes, sir, I do because of the pervasive influence that BN has in Havre where I have most of my clients."

REP. ANDERSON asked if it wasn't also true that most of the people who are injured in Havre have as prospective jurors their friends and neighbors.

Mr. Thueson replied that that was true, but the problem was that their friends and neighbors rely on BN directly or indirectly for their livelihood which made it difficult to get a fair trial.

REP. ANDERSON asked if he had ever tried a case in Hill County.

Mr. Thueson said he had never tried a railroad case in Havre, Montana.

REP. ANDERSON asked about the taxpayers in Cascade County who pay for those cases and if he had taken a poll of them to see what they felt about it.

Mr. Thueson said that some of the petitions were from people in Cascade County. He thought that more pervasive and more to the point was that in the Senate Judiciary the Cascade delegation voted against this bill. He thought they would be the last ones to put a new burden on the taxpayer. With most of the cases coming from out of state with out-of-state attorneys, he felt

there should be some controls on abuses on all attorneys whether out-of-state or not.

REP. ANDERSON asked if he was suggesting that those cases coming from out of state should be limited to venues listed in the bill.

Mr. Thueson said he was not suggesting that. He said he was suggesting with regard to railroad workers, the Montana law be consistent and perhaps in the same language as the federal law so that this bill would not be subject to constitutional attack and so that the railroad workers could choose a forum away from the railroad's influence.

REP. ANDERSON asked for the average cost of a trial in Cascade County to the taxpayers for those railroad cases.

Mr. Thueson said it probably would be the cost of impaneling the jury. He noticed that the railroad indicated that 15% of their cases go to trial. He said he did not know where they got those statistics as he had not tried a FELA case in over two and one-half years in a Cascade County court and he said he probably tries as many or more than anyone. I did not think they have more than one or two per year on the average. The cost would probably be \$15,000 in jury costs per year.

REP. ANDERSON returned to a previously asked question, "Do you feel you can get a better result in Cascade County than in other forums in the state?"

Mr. Thueson answered, "I think that Cascade County is the county that I am familiar with because I represent primarily railroaders out of Havre, the county where my clients go for medical treatment. I do know the judges are, as Mr. Kutzman indicated, sophisticated in FELA and I can get a fairly prompt recovery for my clients in Cascade County.

REP. ANDERSON asked about the cases on the list from Yellowstone County and Flathead County which were also filed in Cascade County.

Mr. Thueson denied having any cases in Yellowstone or having tried a case in Yellowstone County.

REP. ANDERSON said he was referring to it having been taken to Cascade County and why the doctors, etc. were located in Yellowstone County with the case filed in Cascade County.

Mr. Thueson said he did not have any clients in Yellowstone County.

REP. ANDERSON said the injury occurred in Yellowstone County.

Mr. Thueson said it was not his case.

REP. ANDERSON asked if it wasn't possible for medical personnel and the people who testify on his behalf to also travel to a forum other than where they are located.

Mr. Thueson said it was, but thought for a practical matter they consider doctors' busy schedules, and their costs for travel and time.

REP. ANDERSON asked if BN was reducing its force and moving people for the purpose of changing where they can bring trial.

Mr. Thueson explained that he was saying that he was trying to juxtaposition the fact that the Montana railroad workers and that no legislature should give special favors to anyone and certainly not to a corporation which has been known to throw hundreds of people out of work. He said that he understood that as a result of the merger they would be taking 60 more jobs out of the Havre area. In closing branch lines, BN had not shown a lot of consideration for the welfare of people in Montana and that they were funding their merger by raising shipping rates in Montana at the same time asking this legislature to help them against people they had injured. He said if it was a question of fairness, it was not a corporation which should be coming asking for a change in the law.

REP. ANDERSON said he still did not see any nexus between a rational business decision on BN's part and in a venue bill.

Mr. Thueson said his point was that though they may have made a good business decision they had not shown a lot of consideration for the welfare of many Montanan's whether railroad workers, farmers, ranchers or others. He did not think they should be asking the legislature to hurt Montanan's with this kind of legislation to benefit them and that it was not a rational business decision for this legislature to make.

REP. ANDERSON said he had still failed to make a nexus and commented that it seemed that he was overlooking the other Montanan's who are not injured railroad workers, but are in other forms of business and shareholders in all sorts of corporations. He thought it was inaccurate of him to classify Montanan's simply as people who were injured workers and the corporation was against them.

Mr. Thueson said he did represent business people and would hope that Montanan's would take into consideration the people they employ. He was saying that the BN had not always done well over the state. He apologized if he had come across as anti-business or anti-employer.

{Tape: 2; Side: A}

REP. CLIFF TREXLER asked how hard it is to get a change of venue when it causes some sort of inconvenience or it is felt there would be an unfair trial.

Mr. Alke replied that in a civil context it is essentially to get a change of venue. A change of venue is permitted in a criminal context under very limited situations. But he said to keep in mind that is the rule for a lawsuit between Montanan's. He did not understand how the opponents could say that they were being unfair because it is an out-of-state corporation and can't have the option of going to Cascade County. He said they can't go to Cascade under the example which was given unless it is an out-of-state corporation as the defendant. If they are worried about Montanan's, he asked why it would be fair for the man in Augusta to travel to Helena but unfair if it is against an out-of-state corporation.

REP. TREXLER said the list showed that 22 of the 27 court cases which were settled were settled in Cascade County and the rest were settled in Yellowstone County and no settlements in any other counties.

Mr. Alke cleared the record by saying that he did not represent BN and did not know FELA questions and did not know the answer to the question.

REP. BILL TASH asked if railroad workers now have open venues.

Mr. Alke said that he thought the point needing clarification was that it had been suggested that under the Montana Supreme Court decision it is a matter of constitutional law that a railroad worker has a choice of any of the 56 counties. The opponents said this bill would be unconstitutional (inaudible). He said that was absolutely and categorically untrue. The case which went to the supreme court was a Wyoming railroad employee who was sprayed with herbicide in the state of Wyoming and he filed a lawsuit in Cascade County. The railroad moved for the court to apply the principle of Forum Non Conveniens. The supreme court said that would be unconstitutional and would deny the out-of-state plaintiff the right to access to Montana courts. Because he was from Wyoming, if the doctrine of Non Conveniens were applied, he would be totally excluded from all Montana courts because he wouldn't meet any of the other criteria for venue. He said that if the BN decision were taken to mean what the opponents say, they couldn't have a venue bill for anybody. The doctrine the supreme court relied on was the right of full legal redress which prohibits Montana from excluding a Wyoming plaintiff from the Montana courts. If that is construed to say that the right of full legal redress means that a plaintiff can't be stopped from choosing a county, that rule would apply to everybody and it would mean that they couldn't have venue statutes. This state has always had venue statutes and he said, "It is truly absurd for the opponents to suggest that that decision means that the state of Montana

cannot say where the forum will be after the out-of-state plaintiff is admitted to the Montana court system."

REP. KOTTEL asked a series of questions to make the point that FELA law is complex.

Mr. Alke said it actually is not particularly complex as a no-fault system.

REP. KOTTEL said her point was that lawyers have areas of specialty and if a person who does a lot of insurance defense work were to represent an insurance company, would he like to take that case in front of a judge who was a domestic relations judge or would he prefer to take his case to a judge who heard a lot of business law cases.

Mr. Alke responded that all Montana courts are courts of general jurisdiction. There are no specialty judges.

REP. KOTTEL said she understood that and was asking a hypothetical question and repeated the question.

Mr. Alke said he wanted the judge who was closest to his law office.

REP. KOTTEL asked if, when he brought in expert witnesses, he paid them by the hour.

Mr. Alke said that some experts on the plaintiff side do it on a contingent fee basis. He said she was correct that the most common way to compensate experts was by the hour. He agreed that doctors charged a lot per hour.

REP. KOTTEL said it made sense that paying a number of experts to travel would be costly. It made good logical business sense that if they were located in a town that they would try the case in that county.

Mr. Alke said he couldn't agree with that because evidence could always be presented by video tape and he did not think the venue choice should be determined on an unfair basis to accommodate the medical profession.

REP. KOTTEL did not think she was saying that it was to accommodate the medical profession, but as an accommodation for the working man who would have to pay the cost of that in pursuing their case against an out-of-state corporation.

Mr. Alke answered, "True, except as I said, you can simply do it by video tape deposition and avoid the cost of travel also."

REP. KOTTEL sought to clarify a question brought by REP. ANDERSON by pointing out that the plaintiff he referred to was injured in Yellowstone County but his residence was in Hill County. She

said that it was true that railroad people are on the road and might be injured anywhere in Montana, but it would not be convenient to get medical treatment at the location of the injury.

Mr. Thueson said it was a railroad locomotive engineer and they travel all over the place. The injury may not occur where there is a doctor.

REP. KOTTEL asked if Hill County were closer to Yellowstone County or to Cascade County.

Mr. Thueson said that the local doctors in Havre send anyone who has a serious medical condition to Great Falls for care by specialists there because it is the closest place where they can get medical care.

REP. KOTTEL asked him to clarify anything that **Mr. Alke** might have misquoted.

Mr. Thueson said that FELA is not a no-fault system. It is a "negligence" system. It must be proved that the railroad did something wrong.

Further, he sought to correct something **Mr. Alke** misquoted about the unconstitutionality of changing venue from every county. He said that they were saying that the federal law says that railroad workers can sue anywhere the railroad is doing business. The bill would take that right away from them and would give the railroad essentially the right to choose where they want the suit to be filed. They were saying that this bill would go too far and that unless they included that the railroad can be sued anywhere they are doing business it will be unconstitutional because it would negate decades of public policy at the detriment of the persons who are supposed to be protected by it.

REP. LINDA MC CULLOCH asked if **Mr. Berry** represented BN.

Mr. Berry said he did in this legislative process.

REP. MC CULLOCH asked about out-of-state railroad workers filing suit in Montana. She understood that the railroad companies could control the workers by transferring them to other states. She asked if it was possible that some of the losses by out-of-state workers which were filed were actually Montanan's who had been transplanted to other states.

Mr. Berry said it was theoretically possible, but the movement of labor forces was covered under their labor contracts. That would determine their seniority districts and they bid on jobs. He said, "The railroad can't, at its own discretion move people from one place to another."

REP. MC CULLOCH asked the same question from **Mr. Ditzel**.

Mr. Ditzel said, "Oh, yes, you bet they can move us around." He said once they move them, the labor contracts come into play and then they can make a move. The ones who are left after a reduction in force, closed a place down or have walked out of the state can exercise the seniority once they have been moved.

REP. DANIEL MC GEE in referring to EXHIBIT 2 asked if there was a problem with the court system; i.e., the attitude or the complexion or with some issue, in Cascade County versus other counties in the state. He wanted the bottom line.

Mr. Berry said the bottom line was that there is a perception, whether real or not, that there is an advantage to filing a tort action in Great Falls.

{Tape: 2; Side: A; Approx. Counter: 19.6}

Closing by Sponsor:

SEN. CRIPPEN rebutted the comments of the opponents in his closing. He said the only defense they have is to call it a bill for the wealthy rather than to focus on the issues. He suggested that they examine the cases to see how many doctors from Great Falls are actually involved in them. He said they want to go to Great Falls because they can get a favorable hearing in those courts. They don't want to go to Great Falls to file in federal court because they won't get the verdicts they expect from the district courts. He said that if they found a liberal court in another county, they would move to those areas without consideration of having to transport witnesses. The sponsor objected strongly to the allegation that SB 63 is a BN bill and the inference that he is a "BN lackey." He said the bill is a case of fairness and has nothing to do with where the corporation is incorporated. He said that the only place in the entire law where a Montana plaintiff can file a lawsuit against a Montana defendant either in the county where the tort was committed or in the county where the defendant resides. He said that the opponents ignore that fact and it is that kind of attitude which will take Montana out of the mainstream because of demonstrating a double standard of fairness for Montana residents and nonresidents. He said the bill should be examined from the standpoint of fairness to all parties involved.

HEARING ON SJR 10

Opening Statement by Sponsor:

SEN. ETHEL HARDING, SD 37, had received advice in bringing SJR 10 to the legislature for consideration because of her personal involvement as the mother of a daughter who was murdered 21 years previously. The murderer has been on death row for 20 years and in her search to find a way to limit appeals to a reasonable number or to give some relief on the length of time in a

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/16/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓ 9:45	✓	✓
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes		✓	
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ 8:30	✓	
Rep. Debbie Shea	✓ 8:35	✓	
Rep. Liz Smith	✓ 8:45	✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

TESTIMONY IN SUPPORT OF SB-63
Before the
House Judiciary Committee

My name is Mark Petersmeyer and I live in Libby, Montana. I am an engineer, employed by Noranda Minerals Corp. as Project Director for their proposed copper/silver mine in Lincoln County, known as the Montanore Project. Noranda Minerals Corp. is a U.S. company incorporated in Delaware, and is therefore classified as an out-of-state corporation.

The current law lays out the proper venue for defendants in tort cases. For corporations, the proper venue is the county where the tort was committed or the county in which the corporation has its principal place of business. The historical basis in Montana venue law is that a tort action should be heard in a location that has some connection with the parties and/or subject matter of dispute.

In determining venue, Montana statutes do not distinguish between state corporations organized in Montana and those organized outside Montana. In 1924, Montana Supreme Court ruled that out-of-state companies cannot reside in Montana, which is legal fiction. Even though Noranda Minerals Corp., is chartered in Delaware, it has invested tens of millions in Lincoln County; it has no operations elsewhere. Noranda owns property in Lincoln County, our offices and employees are in Lincoln County and our main business is in Lincoln County. If we have a residence anywhere, that place is Lincoln County, but the Supreme Court says otherwise. By ruling that out-of-state companies have no residence, the Supreme Court opened the door for the present situation – the only proper place for a tort action against non-resident companies like Noranda is wherever plaintiff's attorney says it is.

The present situation is discriminatory. It treats out-of-state corporations like second-class citizens by effectively precluding them from arguing for a change in venue. Here is how it has affected Noranda:

Following a \$25 million excavation contract done in 1991, three separate tort cases were brought against Noranda by three of the contractor's employees. One is coming up shortly in which the plaintiff lives in Lincoln County, the tort occurred in Lincoln County and Noranda's operations are in Lincoln County, yet the case will be tried in Cascade County – only because we are incorporated out-of-state. Any Montana corporation would have been able to argue successfully for venue in Lincoln County. The ends of justice are not served by treating Noranda differently than Montana corporations.

Noranda has invested over \$100 million in the project to date, which may get into production, at the earliest, in 1999. We plan to invest an additional \$250 million to complete the work, much of which is planned to be done by contractors. Therefore, we will inevitably face other tort actions of the type we have already experienced. Let me make it clear that Noranda has no dispute with the undeniable right of anyone to file a tort action. Nor is this a "railroad" issue or a "big corporation" issue. What is at issue is that corporations such as Noranda are effectively denied the ability to argue venue, while Montana corporations, big and small have more control over where their torts are heard. This situation is not only unfair, but it is also bad for business because it harms the overall investment climate. When out-of-state firms are considering investment opportunities, this can only be viewed as a negative factor against Montana.

There may be more than one way to modify the law to provide fairness to out-of-state corporations. This is one of them. Noranda supports SB-63, and urges each member of this committee to do the same.

MWP/pr

A handwritten signature in cursive script, appearing to read "M. W. Petersmeyer". The signature is written in dark ink and is positioned to the right of the typed initials "MWP/pr".

Cascade 15
Yellowstone 14

LAWSUITS FILED IN MONTANA 1993 AND 1994
PLAINTIFFS RESIDENTS OUTSIDE MONTANA

Plaintiff's Name	Plaintiff's Residence	Tort Location	Plaintiff's Attorney	Type of Court	County Where Case Filed	Cause #	Settlement Status
ALLARD LYLE	NORTH DAKOTA	ROOSEVELT	COLLINS FIRM	USDC	CASCADE	CV-93-123-GF-PGH	
ASHKANNEJHAD AHMAD	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-94-527	
BERG WILLIAM	WYOMING	WYOMING	YAEGER FIRM	STATE	YELLOWSTONE	DV-93-0167	SETTLED
BERGFELD KENNETH D	WYOMING	WYOMING	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-1034	SETTLED
DILLON TAY	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-829	
EPPLE GARY D	NEBRASKA	WYOMING	ECKMAN FIRM	STATE	CASCADE	BDV-94-040	
FERGUSON SUSAN/RANDALL	WYOMING	BIG HORN CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-66-BLG-RWA	SETTLED
GALLO RALPH	WYOMING	WYOMING	HARTELIUS FIRM	STATE	CASCADE	ADV-93-300	
GITTINGS RICHARD E	MISSOURI	MISSOURI	MORRISARD FIRM	STATE	CASCADE	BDV-94-234	
GRAHAM ROCKY	NORTH DAKOTA	FALLON CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-225-BLG	
JOHNSON LARRY D	TEXAS	YELLOWSTONE CO. MT	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-1226	SETTLED
LAW PATRICK D	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-94-307	
LEFFLER EDWIN D	WYOMING	WYOMING	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-645	SETTLED
LETEMPT GARY L	WYOMING	WASHINGTON	DOSHAN FIRM	STATE	CASCADE	ADV-93-798	
MALONE BURL	WASHINGTON	WASHINGTON	HOYT FIRM	USDC	YELLOWSTONE	CV-94-097-BLG-JDS	SETTLED
MEEKER ROBERT	WYOMING	WYOMING	BURRIS DON	USDC	YELLOWSTONE	CV-93-115-BLG-JDS	SETTLED
MILLER NORMAN R	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-0014	
HILLS JAMES L	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-1241	
MOORE LAURA L	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-93-423	
MUCKLE JR JAMES A	NORTH DAKOTA	MULTIPLE ND	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-0368	SETTLED
NOYES COLONEL L	WYOMING	WYOMING	COLLINS FIRM	USDC	YELLOWSTONE	CV-94-36-BLG-JDS	
OLHEISER LESTER	NORTH DAKOTA	MULTIPLE MT/ND	YAEGER FIRM	STATE	CASCADE	CDV-93-892	SETTLED
PALATO LOUIE E	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-93-799	
REINICK LESLIE	WYOMING	BIG HORN CO. MT	DOSHAN FIRM	STATE	CASCADE	CDV-94-671	
REVELL PAMELA M	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	BDV-94-302	
ROBINSON JAMES C	ILLINOIS	SOUTH DAKOTA	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-213	SETTLED
ROTOLO JULIO	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	BDV-93-420	
SAMS ANDREW L	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-607	
SCHUMACHER TERRANCE	NORTH DAKOTA	DAWSON CO. MT	COLLINS FIRM	STATE	CASCADE	ADV-94-314	
SEARLS MARCUS	WASHINGTON	WASHINGTON	STEPHENSON FIRM	USDC	MISSOULA	CV-93-164-M-CCL	
SELIG TERRY D	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	ADV-93-520	
SOSA DOMINGO D	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-0285	SETTLED
STOREIM JEROME M	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-012	
THOMAS ROBERT A	WYOMING	WYOMING	COLLINS FIRM	USDC	YELLOWSTONE	CV-94-31-BLG-RWA	SETTLED
WADDELL DEAN A	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-237	
WITTMAN RANDY L	WYOMING	WYOMING	ROSE FIRM	STATE	YELLOWSTONE	DV-94-323	
YOUNG SAMUEL F	WASHINGTON	WASHINGTON	DEARDEN FIRM	STATE	CASCADE	CDV-93-145	SETTLED

EXHIBIT 2
DATE 3/10/95
SB 63

LAWSUITS FILED IN MONTANA 1993 AND 1994
PLAINTIFFS RESIDENTS OF MONTANA

Plaintiff's Name	Plaintiff's Residence	Tort Location	Plaintiff's Attorney	Type of Court	County Where Case Filed	Cause #	Settlement Status
ANDERSON BARRY	DAWSON CO. MT	DAWSON CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-175-BLG-RWA	SETTLED
ANDERSON IVAN	FLATHEAD CO. MT	WASHINGTON	YAEGER FIRM	STATE	CASCADE	CDV-94-891	
ANDERSON ROGER D	DAWSON CO. MT	DAWSON CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-30	
BARRETT JOHN L	HILL CO. MT	FLATHEAD CO. MT	YAEGER FIRM	STATE	CASCADE	ADV-94-718	SETTLED
BECK RANDY	FLATHEAD CO. MT	FLATHEAD CO. MT	DEARDEN FIRM	STATE	CASCADE	CDV-93-146	
BECK THOMAS L	FLATHEAD CO. MT	FLATHEAD CO. MT	CONNER FIRM	STATE	CASCADE	BDV-93-289	
BERNDT STEVE	VALLEY CO. MT	NORTH DAKOTA	ROSE FIRM	USDC	YELLOWSTONE	CV-93-183-BLG-JDS	
BODNER EUGENE	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-557	
BOOTH RONALD L	SHERIDAN CO. MT	ROOSEVELT	COLLINS FIRM	STATE	CASCADE	ADV-94-115	
BRADFORD JAMES D	FLATHEAD CO. MT	FLATHEAD CO. MT	BRICKER FIRM	USDC	MISSOULA	CV-93-142-M-CCL	
BRIEN FRANK	HILL CO. MT	HILL CO. MT	HARTELIUS FIRM	STATE	CASCADE	CDV-93-506	SETTLED
BROPHY MICHAEL L	DAWSON CO. MT	DAWSON CO. MT	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-1000	
BUNNELL BILL	YELLOWSTONE CO. MT	YELLOWSTONE CO. MT	CAVAN FIRM	STATE	YELLOWSTONE	DV-93-0616	
BURGERT DAVID E	FLATHEAD CO. MT	FLATHEAD CO. MT	MCGARVEY FIRM	STATE	FLATHEAD	DV-93-505B	
CAMPBELL WALTER D	BLAINE CO. MT	CASCADE CO. MT	COLLINS FIRM	STATE	CASCADE	CDV-93-391	
CARTER GREGORY A	LINCOLN CO. MT	IDAHO	HARRISON FIRM	USDC	MISSOULA	CV-93-147-M-CCL	
CARTWRIGHT RONALD L	HILL CO. MT	HILL CO. MT	CURE FIRM	STATE	CASCADE	CDV-94-954	SETTLED
CHURCH WESLEY D	HILL CO. MT	GLACIER CO. MT	HOYT FIRM	STATE	CASCADE	CDV-93-729	SETTLED
COBB EDWARD	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-93-143	
CONVERSE EDWIN F	HILL CO. MT	LIBERTY CO. MT	THUESON FIRM	STATE	CASCADE	BDV-93-392	
CORNWELL LYNN & FAY	VALLEY CO. MT	VALLEY CO. MT	HURLY FIRM	STATE	VALLEY	19107	
CRESS KENT	DAWSON CO. MT	DAWSON CO. MT	LEWIS TOM	STATE	CASCADE	ADV-93-443	SETTLED
CURL PAMELA A	DAWSON CO. MT	ROSEBUD CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-94-78-BLG-RWA	
DASSINGER ERNIE	ROSEBUD CO. MT	ROSEBUD CO. MT	HOYT JOHN	STATE	ROSEBUD	DV-93-28	
DEES PAUL R	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-526	
DERRY JOHN	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-306	
DOBSON JERALD L	DAWSON CO. MT	DAWSON CO. MT	MORRISARD FIRM	USDC	YELLOWSTONE	CV-94-9-BLG-RWA	SETTLED
DREW ALLAN E	HILL CO. MT	HILL CO. MT	YAEGER FIRM	STATE	CASCADE	BDV-94-035	
DUNNIHO DALE F	YELLOWSTONE CO. MT	BIG HORN CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-93-496	
ERICKSON KELLY R	HILL CO. MT	HILL CO. MT	HOYT FIRM	STATE	CASCADE	BDV-93-599	
FARMER LEE	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	CDV-93-692	
FEENEY FRANK D	FLATHEAD CO. MT	HILL CO. MT	DEARDEN FIRM	STATE	CASCADE	CDV-94-049	SETTLED
FISHER GARRETT L	HILL CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	ADV-93-640	
FRIEDE MATTHEW M	PONDERA CO. MT	HILL CO. MT	HOYT FIRM	STATE	CASCADE	ADV-93-630	SETTLED
FRITZ RICHARD L	CASCADE CO. MT	TOOLE CO. MT	HOYT FIRM	STATE	CASCADE	ADV-94-367	
GOLDEN ROGER	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	ADV-93-769	
GUERRERO SR ROBERT	YELLOWSTONE CO. MT	YELLOWSTONE CO. MT	STEPHENS FIRM	USDC	YELLOWSTONE	CV-94-100-BLG	
HAIGLER EUGENE W	HILL CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	BDV-93-507	
HALL THEODORE ROY	GLACIER CO. MT	GLACIER CO. MT	PRO SE	TRIBAL	BROWNING	94-CA-154	
HANSON ARLEN G	HILL CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	ADV-93-641	
HENDERSON JAMES P	CASCADE CO. MT	PONDERA CO. MT	CONNER FIRM	STATE	CASCADE	BDV-94-170	
HERZOG LARRY	FLATHEAD CO. MT	WEST GLACIER CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-970	
HITCHCOCK ALBERT	MISSOULA CO. MT	MISSOULA CO. MT	STEPHENSON FIRM	USDC	MISSOULA	CV-94-79-M-CCL	
HOLMES JR HAROLD J	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	DV-92-205	SETTLED
KEYES ROBERT J	CASCADE CO. MT	CASCADE CO. MT	COLLINS FIRM	STATE	CASCADE	CDV-93-476	
KLOBOFSKI JOHN	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-758	SETTLED
KNUDSEN LEONARD	CHOTEAU CO. MT	CASCADE CO. MT	HARTELIUS FIRM	STATE	CASCADE	ADV-93-505	
KOVARIK SANDRA	FLATHEAD CO. MT	FLATHEAD CO. MT	HOYT FIRM	USDC	CASCADE	CV-93-130-GF	

EXHIBIT 2

DATE 3-10-95

1 SB63

Plaintiff's Name	Plaintiff's Residence	Tort Location	Plaintiff's Attorney	Type of Court	County Where Case Filed	Cause #	Settlement Status
LARSON ROBERT	HILL CO. MT	HILL CO. MT	YAEGER FIRM	USDC	CASCADE	CV-94-63-GF-PGH	SETTLED
LASALLE LOGAN F	HILL CO. MT	TREASURE CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-177-BLG-RWA	SETTLED
LUCKE ROBERT	FLATHEAD CO. MT	WEST GLACIER CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-277	SETTLED
MANEY PATRICK	HILL CO. MT	HILL CO. MT	YAEGER FIRM	STATE	CASCADE	ADV-93-727	SETTLED
MARTZ JR FRANK	DAWSON CO. MT	DAWSON CO. MT	DOSHAN FIRM	STATE	CASCADE	CDV-93-048	SETTLED
NAVIS DENNIS	FLATHEAD CO. MT	FLATHEAD CO. MT	DEARDEN FIRM	STATE	CASCADE	ADV-94-132	SETTLED
MILLER PERRY H	HILL CO. MT	TOOLE CO. MT	YAEGER FIRM	STATE	CASCADE	BDV-94-171	SETTLED
MILLER PERRY W	BLAINE CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	BDV-93-639	SETTLED
MILLS DENNIS G	FLATHEAD CO. MT	FLATHEAD CO. MT	GROSHONG FIRM	STATE	CASCADE	CDV-93-781	SETTLED
NAYLOR JAMES D	CASCADE CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	ADV-93-296	SETTLED
NEUMANN WALDEMAR	FLATHEAD CO. MT	HILL CO. MT	BRICKER FIRM	USDC	YELLOWSTONE	CV-94-69-BLG-RWA	SETTLED
NOEL FREDERICK B	FLATHEAD CO. MT	FLATHEAD CO. MT	DOSHAN FIRM	STATE	CASCADE	ADV-94-304	SETTLED
OMVIG DOUGLAS L	VALLEY CO. MT	MULTIPLE MT/ND	BRICKER FIRM	STATE	CASCADE	DV-93-535	SETTLED
PEARCY NADINE	FLATHEAD CO. MT	FLATHEAD CO. MT	DEARDEN FIRM	STATE	FLATHEAD	DV-94-187R	SETTLED
PETERS DONALD L	FLATHEAD CO. MT	SHERIDAN CO. MT	THUESON FIRM	STATE	CASCADE	BDV-94-1226	SETTLED
RAMBO STAN	CASCADE CO. MT	CASCADE CO. MT	THUESON FIRM	STATE	CASCADE	BDV-94-152	SETTLED
REDWOLF REDHORSE ET AL	BIG HORN CO. MT	BIG HORN CO. MT	BELUE FIRM	TRIBAL	BIG HORN	94-31	SETTLED
RICKETT RICHARD P	CUSTER CO. MT	ROSEBUD CO. MT	YAEGER FIRM	STATE	CASCADE	ADV-94-1095	SETTLED
RUMMEL GREGORY S	HILL CO. MT	LIBERTY CO. MT	BRICKER FIRM	STATE	YELLOWSTONE	DV-93-201	SETTLED
SAPP STEVE	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	ADV-93-306	SETTLED
SCHAUB DANIEL J	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-998	SETTLED
SCHMID RON	PARK CO. MT	PARK CO. MT	HARTELIUS FIRM	USDC	YELLOWSTONE	CV-94-35-BLG-RWA	SETTLED
SCHRRANTZ DONALD G	MISSOULA CO. MT	DEER LODGE CO. MT	KELLER FIRM	STATE	CASCADE	ADV-93-463	SETTLED
SHULUND DALE	HILL CO. MT	HILL CO. MT	DEARDEN FIRM	STATE	CASCADE	ADV-94-877	SETTLED
SONJU BRUCE	TOOLE CO. MT	PHILLIPS CO. MT	COLLINS FIRM	STATE	CASCADE	BDV-93-531	SETTLED
SORG KENT D	FLATHEAD CO. MT	FLATHEAD CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-303	SETTLED
SPRINGFIELD WILLIAM B	BIG HORN CO. MT	BIG HORN CO. MT	LYNAUGH FIRM	TRIBAL	BIG HORN	94-341	SETTLED
SPRINKLE JONATHAN B	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CDV-93-1018	SETTLED
STIFFARM JOE	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CV-93-045-GF	SETTLED
TESKE LARRY B	HILL CO. MT	HILL CO. MT	STEPHENSON FIRM	USDC	MISSOULA	CV-94-24-M-CCL	SETTLED
TESKEY ROBERT P	VALLEY CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	ADV-93-397	SETTLED
TREFTZ ROBERT H	DAWSON CO. MT	HILL CO. MT	MORRISARD FIRM	USDC	YELLOWSTONE	CV-93-26-BLG-JDS	SETTLED
TURNER HARVIN	HILL CO. MT	BLAINE CO. MT	THUESON FIRM	STATE	CASCADE	CV-93-256	SETTLED
VANKLECK TOM	HILL CO. MT	YELLOWSTONE CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-490	SETTLED
VICKERS BYRON	DAWSON CO. MT	PRAIRIE CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-224-BLG	SETTLED
VOSEN ROBERT L	HILL CO. MT	HILL CO. MT	BRICKER FIRM	USDC	YELLOWSTONE	CV-93-157-BLG-RWA	SETTLED
WABER JULIUS	DEER LODGE CO. MT	DEER LODGE CO. MT	JOHNSON FIRM	STATE	SILVER BOW	93-C-424	SETTLED
WAGNER ARCHIE	PHILLIPS CO. MT	NORTH DAKOTA	COLLINS FIRM	STATE	CASCADE	CDV-92-289	SETTLED
WARREN CLIFF	HILL CO. MT	BLAINE CO. MT	THUESON FIRM	STATE	CASCADE	CDV-93-252	SETTLED
WEAVER MOLLENE L	VALLEY CO. MT	VALLEY CO. MT	YAEGER FIRM	STATE	CASCADE	CDV-93-303	SETTLED
WHITE LARRY E	GLACIER CO. MT	MULTIPLE MT	HARTELIUS FIRM	STATE	CASCADE	CDV-93-737	SETTLED
WHITFORD DAVID	FLATHEAD CO. MT	FLATHEAD CO. MT	THUESON FIRM	STATE	CASCADE	ADV-94-943	SETTLED
YOUNG ETHAN V	DAWSON CO. MT	DAWSON CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-172-BLG	SETTLED

Troy Unit
D. K. Young
Manager

March 8, 1995

State of Montana
House Judiciary Committee

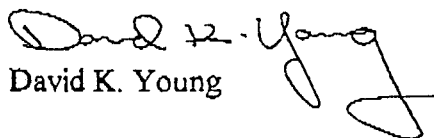
Dear Committee Members,

I would like to enter the following comments in support of Senate Bill 63.

As an employee of ASARCO Incorporated I am aware of the many potential legal actions that can occur against the company. It is my understanding that in the case of a company, such as Asarco, that is incorporated in the State of New Jersey there are no rights for the company in determining venue for possible tort action against the company. While other business and individuals have a say in the determination of venue, out of state companies do not. This seems to be discrimination against Asarco since the company does conduct an extensive amount of business in the state through considerable land holdings and operations. As a matter of fact Asarco has been in the state since the turn of the century providing jobs, buying goods and services, paying income and property taxes, paying gross proceeds taxes and other associated taxes. It would seem fair that the company should have the same rights as any other individual or company that conducts business in the state.

Thank-you for allowing me to comment on this important matter, and I hope you will consider the information that I have presented.

Sincerely,


David K. Young

■ GAZETTE OPINION

BN bill good for taxpayers

Save Montana courts for
Montana taxpayers

BURLINGTON NORTHERN is backing a reasonable bill in the Legislature.

Senate Bill 63 is an attempt to bring balance to a failure of federal law regarding injured railroad employees. The bonus is that the bill takes some onus off state taxpayers.

First, the background.

Injured railroad workers are compelled to go through an adversarial process to get compensation. They either negotiate a settlement or go to court.

Pat Keim, BN's director of government affairs, says the railroad seldom disputes the claimed injury. However, the amount of settlement sets both sides to singing the blues.

Because of a kink in federal law, Keim says, BN employees can file injury suits in any jurisdiction, regardless of where the employee lives or where the injury occurred. That sort of largess is not afforded most Americans.

It is natural, then, that the employees' attorneys seek jurisdictions where they believe they are likely to find a sympathetic ear and a history of large settlements. Among the favorites are Montana, Birmingham, Ala., and East St. Louis, Mo.

There is a bit of mid-state shuffling, too. BN workers injured within Montana tend to file suits in district courts in Yellowstone and Cascade counties.

Some injured employees file suits in federal courts in Yellowstone and Cascade counties, too, but the proposed state law would not affect those cases.

In 1993 and 1994, there were 13 BN cases filed in state district courts in Cascade County and 11 filed in Billings. In each case, the injury occurred neither in Montana nor did the injured worker live here.

Injury suits are often complex and time consuming. That means that Montana courts' calendars are being crowded for the convenience of people who neither pay taxes in this state nor have any interest in how cumbersome court calendars are.

That also means that Montana taxpayers are given the bill for these strangers. What could be stranger than that?

SB-63 holds that only people who reside in Montana or who were injured here can file injury compensation suits in this state.

That seems fair to railway workers. It seems even more fair to the taxpayers of this state. Certainly, legislators will agree and pass SB-63.

Our view

State must outlaw venue shopping

The Issue: Cascade County is too popular a site for railroad injury trials that have nothing to do with us.

Our opinion: Legislators should limit where these trials can be held.

Cascade County is paying a price for its own generosity.

Over the years, we've become known as a place where a plaintiff could win a substantial award. As a result, Cascade County has become a mecca for trial attorneys, even when cases have nothing to do with us.

Now our courts are clogged with 106 railroad injury cases, and county taxpayers pay the bills for operating the courts.

Take last year, for example. Five cases filed against Burlington Northern in 1993 were on the court docket in 1994. Three were settled during the trial, but two others went to the jury — which awarded the plaintiffs \$675,000 in one case and \$850,000 in the other.

One of the cases involved a Montana wreck, but the other four were from Wyoming.

Total cost to Cascade County taxpayers for hosting these trials was nearly \$8,000.

The problem is that 56 lawsuits against Burlington Northern were filed here in 1993 alone, and there are 40 more pending from 1994.

It will take us years to work through this caseload, delaying local lawsuits.

One of the reasons is that Montana law permits venue shopping. This means lawyers can file a suit where they think they can win the biggest award, not merely in the jurisdiction where the accident happened, where the plaintiff lives, or where the company is headquartered.

The most profitable places to

Court cases

Here's a list of the number of cases filed against Burlington Northern Railroad in Cascade County over the past seven years.

1988.....	18
1989.....	35
1990.....	26
1991.....	43
1992.....	76
1993.....	56
1994.....	45

Source: Cascade County Clerk of Court

file have been Cascade and Yellowstone counties.

Burlington Northern says 15 cases have been filed in Cascade and 14 in Yellowstone over the past two years in which railroad workers don't live in Montana, nor did the accidents take place here.

What to do?

The legislature should pass a law requiring that railroad injury cases can only be filed in a court where the injury occurred, where the worker lives, or where the company is headquartered.

Cascade County judges should refuse to hear cases that have nothing to do with Montana or Montanans, and the Supreme Court should back them up in declining to hear those cases.

Without some swift corrective action, Cascade County taxpayers are going to be paying a substantial price to host a bunch of lawsuits that really don't belong here.

DATE 3/10/95
SB 63

No. 94-100

IN THE SUPREME COURT OF THE STATE OF MONTANA

1994

STATE OF MONTANA, EX REL.,
BURLINGTON NORTHERN RAILROAD
COMPANY, a corporation,
Relator,

-v-

THE DISTRICT COURT OF THE EIGHTH
JUDICIAL DISTRICT COURT, CASCADE COUNTY,
and HONORABLE JOHN M. MCCARVEL
Respondents.

FILED

MAR 2 1995

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

ORIGINAL PROCEEDING

COUNSEL OF RECORD:

For Relator:

Kurt W. Kroschel (argued), Dennis Nettiksimmons,
Kroschel & Yerger, Billings, Montana

For Plaintiff:

C. Marshall Friedman, St. Louis, Missouri, Lynn D.
Baker, Newton McCoy (argued), Hartelius, Ferguson &
Baker, Great Falls, Montana (Iddings)

For Third-Party Defendants:

Don M. Hayes, Herndon, Hartman, Sweeney & Halverson,
Billings, Montana (DuPont de Nemours & Co.); L.D.
Nybo, Nybo, Conklin & LeVeque, Great Falls, Montana
(SSI/Mobley Co.)

For Amici:

Randy Cox, Boone, Karlberg & Haddon, Missoula,
Montana, Sue Ann Love, Great Falls, Montana (Montana
Defense Trial Lawyers); Patricia O'Brien Cotter,
Cotter & Cotter, Great Falls, Montana, Lawrence
Anderson, Great Falls, Montana (Montana Trial
Lawyers Association); Robert M. Knight, Helena S.
Maclay, Knight, Maclay & Masar, Missoula, Montana

Heard: October 25, 1994

Submitted: October 25, 1994

Decided: March 2, 1995

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the Historical Society at 225 North Roberts
Street, Helena, MT 59620-1201. The phone
number is 444-2694.

[Signature]
Clerk

EXHIBIT 5
DATE 3/10/95
SB 63

ANSWERS TO QUESTIONS
CONCERNING
SENATE BILL NO. 63

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

BURLINGTON NORTHERN RAILROAD
FACT SHEET - SB 63 - VENUE

WHAT IS VENUE?

Venue is the location at which a lawsuit can be filed. State law determines where a lawsuit can be filed and it varies by issue. For example, venue for a contract dispute is the county in which the defendant resides or the county in which the contract was to be performed (§25-2-121 MCA).

WHAT IS A TORT AND ITS VENUE?

Generally, a tort is an act that causes a personal injury. Currently, the venue for a tort lawsuit for an in-state corporation is the county in which the defendant resides or the county where the tort occurred. Current Montana law allows out-of-state corporations to be sued in any court of the plaintiff's choosing.

ANSWER: There is a good reason why Montanans have been given the right to sue out-of-state corporations in any county. Our history is replete with instances where companies have had a great deal of influence in the county where they reside and where the injury, coincidentally, normally occurs. Therefore, about 100 years ago, this legislature decided to give Montanans a broader choice of venue so that they could get a fair trial -- away from the influence of the corporation in the county where it resides. This is further explained in other materials provided to you.

THE PROBLEM

Because of Montana's liberal venue statute, tort litigation is being filed, not where the tort occurs or even where the plaintiff resides, but where the lawyer lives or believes the biggest damage award can be received. This is known as venue shopping. Even more incredible is that many cases are being filed in Montana's courts by residents of other states where the injury took place in other states.

ANSWER: Burlington's so-called "fact sheet" is incorrect. The Montana Supreme Court has stated for 35 years that the policies of federal law, dealing with suits by workers against the railroad, allows the worker to sue the railroad wherever it is "doing business." Why shouldn't a railroad worker be able to sue his own employer in any county where it is "doing business?" This is not "venue shopping," but merely a right that railroad workers have under long-standing law.

If anything is venue shopping, it is the results of Senate Bill 63, which allows the railroad to "shop" for the venue best suited to the railroad. Specifically,

the bill funnels most of the cases into Havre, Montana, BN's company town. Once the case is there, the railroad worker is not going to get a fair shake. Thus, when BN drafted this bill, it was forum shopping -- not the railroad worker, who simply wants to file suit where his employer is "doing business."

EXAMPLE

Noranda Minerals Corporation is developing a major gold mine near Libby, Montana (Lincoln County). Three individuals working for a subcontractor were injured. They lived in Lincoln County, the injuries took place in Lincoln County. Noranda has its only place of business in Lincoln County, but the lawsuit was filed in Great Falls (Cascade County) by a Great Falls lawyer. If Noranda were incorporated in Montana, the lawsuit would have been filed in Lincoln County.

ANSWER: If Noranda's attorneys allowed Noranda to be sued in Cascade County state Court, then it should hire new attorneys. Noranda, as an out-of-state corporation, has a right to have its suits removed to the federal court closest to where it is doing business or where the injury occurred.

If the BN were asked for a list of examples where out-of-state corporations have been forced to defend suits in far away counties, the list would be exceedingly short. This is because out-of-state corporations are allowed to remove the case to federal court. As a result, lawsuits against out-of-state corporations in state courts almost never happen if they have to defend in state court.

The Noranda situation shows why it's not a great hardship to corporations, even from time to time. Noranda Mineral Corporation has decided to incorporate in Delaware, which, of course, means that it doesn't have to pay Montana taxes like an in-state corporation. If Noranda can travel all the way across the country to mine our minerals, then certainly it can travel across the Continental Divide to defend itself when it injures someone. As a multi-million dollar corporation, it is certainly capable of incurring a little extra expense to travel 200 miles. It is far better situated to do so than an injured Montanan of limited means.

WHAT IS THE FEDERAL EMPLOYERS' LIABILITY ACT(FELA)?

Railroads are prohibited from being part of a state's workers' compensation program, which generally is a no-fault system (no litigation over negligence). Injuries to railroad workers are covered by FELA, which is a fault system. As a result, there is generally more litigation over such injuries. FELA says that such litigation can be filed in federal or state court.

ANSWER: BN leaves out one important fact. As stated by the Montana Supreme Court in the recent case involving this issue, "FELA is to be given liberal construction in favor of injured railroad employees so that it may accomplish its humanitarian and remedial purposes. . . . We have found highly persuasive policy favoring the injured worker's choice of forum. . . . We recently re-emphasize our commitment to 'the strong national policy favoring a plaintiff's selection of forum in actions brought under the Federal Employers' Liability Act'." In the decision decided last week, the Montana Supreme Court said that these policies are of "paramount" concern. Any attempt to give the railroad the right to choose its place of trial at the expense of the injured Montana worker, obviously, is totally contradictory to these public policies. It will be declared unconstitutional.

THE PROBLEM

Because of Montana's liberal attitude toward lawsuits, 29 cases were filed in 1993 and '94 by railroad workers who were neither injured in Montana, nor reside in Montana. 15 of those were filed in Cascade County and 14 were filed in Yellowstone County. Interestingly only two of those 29 had a Montana lawyer as lead counsel. So these out-of-state cases are being filed by out-of-state lawyers in Montana state courts, at the expense of Montana taxpayers.

ANSWER: It may be true that there are some out-of-state cases being filed by out-of-state lawyers in Montana State Courts, but this can be fixed without taking away the rights of Montana workers in the process.

Beyond that, Burlington Northern's intentions should be seriously questioned. It has never been concerned about the welfare of Montanans. It is now funding its merger by raising freight rates to Montanans. It has thrown hundreds of people out of work along the Hi-Line. As a result of the merger, its going to throw 60 more people out of work in Havre. It has closed down branch lines to our farmers and ranchers. This is not the type of corporation that should be granted special favors at the cost of Montanans.

ABUSE

In 1993, a Minnesota law firm filed a lawsuit for an Illinois resident injured in South Dakota in Cascade County Court.

In addition, there were 91 cases filed by Montana residents. Of those 91, 79 or 86.8% were filed in either Cascade or Yellowstone County, yet 68 or 74.7% had nothing to do with those counties. Neither the tort occurred there, nor did the plaintiff live there.

ANSWER: We know of no Montanans who are going to defend the actions of out-of-state lawyers.

THE COST

Litigation is expensive. It takes up a good part of the district court's time and that costs money. How much? It's hard to say with certainty. There are costs involved with handling the paper filed with the Clerk of Court and with any pretrial activity. Most of the cases settle before trial, but unquantifiable costs are still incurred.

About 15% of the cases filed against Burlington Northern go to trial. That may vary from year to year depending on the type of case and the attorneys involved. It is estimated that a complete trial (usually seven days) costs the state and county about \$7,000 of state taxpayers' money.

ANSWER: Litigation is expensive for the litigants no matter where the case is filed. Litigation would be less expensive if the Burlington Northern would treat its workers fairly and settle with them rather than forcing them through the court system.

Burlington Northern's statement that "15% of the cases filed against Burlington Northern go to trial" is questionable and probably untrue. We don't know where they get this statistic, but we do know that a review of Montana cases over the last 10 years indicate that only four cases went to trial and were appealed. Assuming that the same amount went to trial, but were not appealed, that still would be less than one case per year going to trial throughout the State of Montana involving injured railroad workers. This being the case, it's a far cry from the "15%" the BN is representing in its so-called "fact sheet."

WHAT DOES SB 63 DO?

It treats companies incorporated in states other than Montana in a manner similar to companies incorporated in Montana. It changes where tort litigation can be filed against out-of-state corporations. Rather than being allowed to file tort litigation anywhere they feel like, plaintiffs' lawyers will have to file lawsuits:

1. Where the tort occurs, or
2. Where the plaintiff resides, or
3. Where the registered agent resides, or
4. The first judicial district (Lewis & Clark County).

ANSWER: Senate Bill 63 doesn't change the way the law works for out-of-state corporations in any measurable way -- other than for the Burlington Northern. Any out-of-state corporation currently has the right to remove a case brought against it by a Montanan to the closest federal court available. The number of exceptions over the past century can probably be counted on one's hand.

Since out-of-state corporations are not effected in any measurable way, the naked reason for Senate Bill 63 is to benefit Burlington Northern at the cost of Montana citizens. It restricts the rights of railroad workers to choose their forum. It gives BN the right to choose the forum in the majority of the cases. It allows it to funnel most of the cases into Havre, Montana, where BN has considerable control and influence.

Allowing suits in Lewis & Clark County might provide a limited advantage, but it is still directly contrary to a railroader's right to sue his own company in any location where BN is "doing business."

THE RESULT

- * Out-of-state lawsuits discouraged
- * Litigation will shift to federal courts where it belongs
- * Reduced state court costs and case load

ANSWER: Senate Bill 63 would, to a limited extent, discourage out-of-state lawsuits. Since probably all of the out-of-state lawsuits are against Burlington Northern, however, it would have no effect on other out-of-state corporations.

Litigation will not shift to the federal courts because litigation against out-of-state corporations is already in the federal courts. As mentioned above, out-of-state corporations have a right to remove the case to federal court when sued by a Montanan.

Passing Senate Bill 63 will not diminish court costs in any measurable way. Again, it only effects the Burlington Northern.

One important result not mentioned by the Burlington Northern is that this legislation is unconstitutional. The duty of the Montana Supreme Court will be to strike Senate Bill 63 down. The Court cannot allow a special interest group to write a bill designed to benefit only the special interest group at a cost to Montanans. The Court has already stated it is not going to allow Burlington Northern to choose its own venue at the cost to its workers.

PETITION TO THE MONTANA LEGISLATURE

We are Montana citizens and taxpayers. We understand you are considering a law which would force Montanans to sue corporations, like Burlington Northern, in counties where the corporation has considerable power and influence. This would change the current law, which allows people to sue out of state corporations in any county of the state so that they don't have to be stuck in a company town where the corporation can influence the outcome of the trial.

We oppose this change. It is difficult enough to prevent powerful corporations from harming us. We don't need a new law that gives corporations even greater power over our lives when they injure us.

SIGNATURE	ADDRESS	DATE
Colby A. Brough	STAN R. V 3L Box 166	2-3-95
Dean Vegge	625 5 th St. N. Glasgow mt	2-3-95
Bob Mickle	Box 415	2-3-95
Kent A McCormick	708 12 th St Haure mt	2-3-95
Allen Woodwick	619 4 th Ave Haure mt	2-3-95
Harry W. Wicks	Box 544 CHESTER	2-3-95
A. D. Leo	P.O. Box 961 Haure	2-3-95
L. L. Leo	Box 414 HARLOW MT	2-3-95
Roy R. Hodoy	1217 4 th St. Haure	2-3-95
Just Shroeder	1421 3 rd St Haure. MT	2-3-95
Bruce M. Hoover	Box 1581 Chinook, MT 59523	2-3-95
A. S. Mithun	924 3 rd Ave HAURE MT	2-3-95
Jack D Anderson	522 TENTH ST. HAURE MT.	2-3-95

Mr. Chairman, Members of the Committee, I'm Fran Marceau, United Transportation Union State Legislative Director, and I ask you to oppose Senate Bill 63.

Montana has a long and proud history of fostering the rights of the common man and of railroad workers in particular. Senate Bill 63 would blemish that history by changing state venue laws to benefit foreign, non-resident corporations, at the expense of average Montana citizens and workers.

Throughout this century, through an unbroken chain of decisions of the Montana Supreme Court, it has been recognized that a foreign corporation has no Montana residence for venue purposes, and can be sued in any county selected by a citizen of this state. In 1985, this was formally codified by the Montana legislature. This law has served the citizens of this state well, and good reason does not exist to change it.

Montana's venue law, in fact, is one of the few venue statutes to have been examined by the United States Supreme Court in recent years. The Supreme Court found it to be fundamentally fair and reasonable, and held that it did not impose undue hardship on foreign corporations. In that 1992 decision, the Supreme Court recognized that inconvenience to a foreign corporation will not significantly vary if that foreign corporation has to defend in Billings as opposed to Havre, for example, and held that a non-resident corporation's interest in convenience is too slight to outweigh the interest of an injured citizen in suing in the forum of his choice.

Indisputably, the right to selection of forum is a critically important one to injured citizens and workers in this state. Any Montana citizen who is injured by the negligence or recklessness of a large non-resident corporation already has an uphill battle. The private citizen may arm himself only with the services of an attorney, while the corporation can bring to bear vast sums of money and a large army of lawyers to oppose him. To deny injured Montana citizens the forum of their choice is to afford one more tactical advantage to these non-resident, foreign corporations.

There are, of course, good and proper reasons why an injured citizen of this state might want to sue in a county other than that of his residence, where the accident occurred, or where the corporation claims to have its principal place of business. Litigation will frequently center where an injured plaintiff

receives his basic medical treatment; in many instances this will necessarily occur in a major metropolitan location, even if the plaintiff resides, and the accident took place, outstate. Trial will frequently center upon the testimony of these medical experts. At present, Montana citizens have the right to take this into account when determining where to bring suit. Under Senate Bill 63, this right would be taken away from them. The cost of bringing medical doctors to a distant trial for an injured individual would be a real hardship and would often result in loss of live medical testimony for injured residents of this state.

Senate Bill 63 would also afford non-resident, foreign corporations an unfair advantage when the citizens of this state are injured as a result of so-called "toxic torts." In recent years, for example, there has been a significant amount of litigation on behalf of injured railroad workers who have suffered asbestosis and related injuries as a result of their exposure to asbestos dust while working for the railroad. These workers reside in different counties across the state, and were similarly injured in different counties throughout Montana. Under the present venue law, it was possible to consolidate the bulk of these cases in a single forum because of the right of citizens of this state to sue non-resident corporations in any county of their choosing. This resulted in major savings to the taxpayers of this state. If this had not been possible, smaller district courts in Montana would have been literally overwhelmed through repetitive, complicated, time consuming litigation. Such would be the result of Senate Bill 63.

It cannot be emphasized enough that Senate Bill 63 would result in a major wasting of judicial resources in this state. At present, the venue law regarding non-resident corporations is clear and is not the subject of legal battles. Under this bill, it can be expected that foreign corporations will attempt to claim smaller, rural counties as their principal place of business, under the belief that such counties will return smaller verdicts to the injured citizens and workers of this state. Repeated court battles over what county constitutes a foreign corporation's true principal place of business can be expected, with unnecessary cost to taxpayers and unnecessary legal expense to this state's injured citizens.

Moreover, should a foreign corporation claim a small, out-state county as its principal place of business, the limited judicial resources of that county could be completely overwhelmed as a result of the claimed presence of that single company, even though that corporation does significant business throughout the entire state.

Senate Bill 63 would also significantly impede the rights of railroad workers in this state. Injured railroad workers are not covered by state workmans' compensation, but by a Federal law known as the Federal Employers' Liability Act. Under the Act, railroad workers can sue a railroad in any Federal district where the railroad does business or maintains a line of rail. At

present, the Montana court system affords injured Montana railroad workers this same fundamental right. The United States Supreme Court has recognized that the right of an injured railroad worker to select his legal forum is a critical one which must be protected. Senate Bill 63 would, in a very real sense, eliminate this right in the Montana courts, to the detriment of all railroad workers who live here.

In our society, the right to seek legal redress in the courts is a fundamental one and one of the highest and most essential privileges of citizenship. Senate Bill 63 seeks to fix something which is not broken, and would unnecessarily erode the practical legal rights of the citizens of Montana; and burden the courts of this state.

EXHIBIT 8
DATE 3-10-95
SB 63

Great Falls Tribune
March 6, 1995

EXHIBIT 9
DATE 3/10/95
SB 123

Court rules workers can file suits in state

HELENA (AP) — Out-of-state employees of railroads operating in Montana cannot be barred from filing injury lawsuits in state courts, the Montana Supreme Court said Thursday.

The 5-2 ruling said a federal law governing such suits and the constitutional requirement for full access to Montana courts outweighs the threat of courts being deluged with suits by rail workers seeking favorable treatment.

The decision was a defeat for Burlington Northern Railroad, which wanted the justices to rule that a suit filed by Anthony Iddings, a BN worker in Wyoming, should be tossed from Montana courts.

The ruling also settled an argument that has been in the courts at least since 1959 and has been considered by the Supreme Court five times.

The main issue is a doctrine that allows a court to refuse jurisdiction over a case if it concludes a more appropriate or convenient forum can be found.

BN wanted Iddings's suit in District Court at Great Falls to be dismissed on that ground. The railroad contended a substantial increase in such filings in Montana under the Federal Employers' Liability Act warranted the dismissal.

Iddings said the number of out-of-state residents filing such FELA suits in Montana has not clogged the courts.

The number of suits under the federal law does not matter, the high court ruled.

What matters is the Montana Constitution's mandate that citizens have unrestricted access to the courts and that requirement cannot be limited only to Montana residents, the court said.

EXHIBIT 10
DATE 3/10/95
SB 63

WAYNE S. YOUNG
LOCAL CHAIRMAN, LOCAL #735
BROTHERHOOD OF MAINTENANCE OF WAY
DEARBORN ROUTE
WOLF CREEK, MONTANA 59648

Monte D. Beck
1700 W. Koch
Bozeman, Montana 59715

Dear Sir:

It has come to my attention that the Burlington Northern Railroad is trying to stop out of state workers from filing lawsuits in Montana. I would like to express my opinion on this subject.

First of all, it is my contention that while working for a company as large as BN, you should be able to bring action against the company anywhere it is located. Over the last several years, BN has cut many jobs. Employees are no longer able to hold positions where they live. For example, one sectionman here in Wolf Creek, after 15 years of employment, is presently working on a gang in Wyoming because he can no longer hold here at home. It is difficult enough to travel to Wyoming to work, without the added expense of having to file a lawsuit there should he become hurt on the job. He is not alone in this respect. Many employees affected by the sale of the line between Laurel and Sandpoint, Id. are in the same position.

Burlington Northern contends that the present practice is clogging the court system in Montana. However, I believe, that very few suits against the company ever come to trial. The majority are settled out of court.

It is my hope that you will take a long look at this and come to the conclusion that it is in the best interests of Montana and it's workers to keep the system unchanged.

Thank you for your time and consideration.

Sincerely,

Wayne S. Young

THUESON & LAMB

ATTORNEYS AT LAW
213 FIFTH AVENUE
P.O. BOX 535
HELENA, MT 59624-0535
(406) 442-8848

ERIK B. THUESON
MICHEAL F. LAMB
JOHN A. KUTZMAN

EXHIBIT 11
DATE 3/10/95
SB 63

GREAT FALLS OFFICE:
507 STRAIN BLDG.
GREAT FALLS, MT 59401
(406) 727-7304

March 13, 1995

Montana House Judiciary Committee
Capitol Station
Helena, Montana 59620

Dear Committee:

Emotions were obviously running high over Senate Bill 63. I would like to comment on a few matters brought up on Senator Crippen's closing.

First, Senator Crippen has the mistaken impression he was being called a lackey of the Burlington Northern Railroad. Quite to the contrary. I believe that Senator Crippen and others signed off on this bill based upon compelling statistics presented to them, which indicated there was forum shopping occurring within Montana. If I was in their shoes and I had been presented these statistics, I would have signed up on this bill as well.

As was made clear at the hearing last week, there obviously was considerable information which was not given to the legislators when the bill was proposed. For instance, no one mentioned that BN presents a special situation, since federal policies and statutes give the worker--not BN--the right to choose the place of trial. In addition, I don't think anyone raised the fact that all out-of-state corporations, except BN, already have an absolute right to change the place of trial to the nearest federal court if they do not like the place where it is filed. Finally, we did not know until last week that the Montana Supreme Court would indicate that any efforts to limit the railroader's right to choose the place of trial could not constitutionally be restricted beyond where the railroad is "doing business."

These implications, of course, were what was presented to this committee during hearing on this bill. It is regrettable that Senator Crippen misunderstood the remarks to be a personal attack on him. Nothing of the sort was intended. To some extent, I blame myself for not making this clear. This bill--like all proposals--should be decided on the facts.

My fear now, however, is that this bill does have an emotional life of its own and will be approved, notwithstanding the fact that it is a bad bill. Thus, I wanted to write this letter to clear the air as much as possible.

Montana House Judiciary Committee

March 13, 1995

Page 2

In closing, I would like to repeat that Montana lawyers, too, do not like the forum shopping that is bringing cases into Montana that have nothing to do with Montanans. Although we are abdicating the Montanan's right to a broad choice of forum for the reasons previously stated, we have long realized that these out-of-state cases would create a backlash. I believe, however, that the issues should be attacked directly and that BN should not be entitled to skillfully take advantage of the situation at the expense of Montanans.

Thank you, as always, for giving me this opportunity to comment.

Sincerely yours,

THUESON & LAMB

Erik

Erik B. Thueson

EBT:rs

b/m

EXHIBIT 12
DATE 3/10/95
SB 63

Montana Trial Lawyers ASSOCIATION

Directors:

Wade Dahood
Director Emeritus
Monte D. Beck
Elizabeth A. Best
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Robert S. Fain, Jr.
Victor R. Halverson, Jr.
Gene R. Jarussi
Peter M. Meloy
John M. Morrison
Gregory S. Munro
David R. Paoli
Michael E. Wheat

Russell B. Hill, Executive Director
#1 N. Last Chance Gulch
Helena, Montana 59601
Tel: (406) 443-3124
Fax: (406) 443-7850
March 10, 1995

Officers:

Gregory S. Munro
President
Michael E. Wheat
President-Elect
Gene R. Jarussi
Vice President
John M. Morrison
Secretary-Treasurer
William A. Rossbach
Governor
Paul M. Warren
Governor

Sen. Bob Clark, Chair
Senate Judiciary Committee
Room 312-1, State Capitol
Helena, MT 59620

RE: Senate Bill 63

Mr. Chair, Members of the Committee:

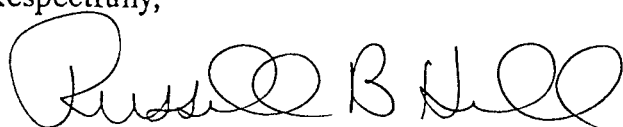
MTLA opposes SB 63, which benefits out-of-state corporations--specifically Burlington Northern railroad--at the expense of more than 800,000 Montana citizens.

BN complains often about "out-of-state railroaders" in Montana courts. *But BN itself controls the residence of its workers and frequently transfers Montana workers to other states.* And BN knows it cannot discriminate between citizens of different states.

SB 63 dramatically impacts all Montana citizens who must resort to court--*not just individuals*--and the bill covers numerous types of commercial misconduct (in franchise disputes, financial transactions, damage to business reputation, etc.). SB 63 would force many Montana individuals and businesses to fight out-of-state corporations in the "company towns" where those corporate giants exert most influence. It would force many more Montana individuals and businesses to fight out-of-state corporations in courts with less, not more, connection to the lawsuit. For example, in Lewis and Clark County, SB 63's artificial "county line" mentality would force an Augusta business or individual to fight a legal battle in faraway Helena court rather than in Great Falls or Choteau, which are much closer in both distance and economic ties.

Thank you again for this opportunity to express MTLA's opposition to Senate Bill 63.

Respectfully,



Russell B. Hill, Executive Director

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 3/10/95

BILL NO. SB 63

SPONSOR(S) Sen. Cruppen

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support
Fran Marceod	U.T.U.	☒
Mike Quinn	UTU	
WAYNE S Young	BMW E	
MARK PETERSMEYER	NORANDA	☒
Dave Ditzel	BLE	
John A. Kutzman	Self	
Blake J. Werdal	Lewis & Clark Co	
Erick Thunes		
Josephine J. Lemark	Am. Ins. Ass'n	☒
Wendy Hamaker	STILLWATER MINING Farmers Ins. Group	☒
Doni Allen	MT. Wash Products Corp	☒
Russ Allen	Wash. Corp	☒
Dor Judge	MT STATE AFL-CIO	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENTS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:vissbcom.man

CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE

BILL NO. SB63 SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jim Mockler	Mt. Coal Council	SB63 ✓	
Russ Petter	Environ Condo Mining Rustler	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 14, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 327, SB 316, SB 333
Executive Action:	SB 63 BE CONCURRED IN
	SB 109 BE CONCURRED IN
	SB 229 BE CONCURRED IN AS AMENDED
	SB 340 BE CONCURRED IN AS AMENDED

Motion: REP. HURDLE MOVED A CONCEPTUAL AMENDMENT WHICH WOULD LEAN THE EQUITY VALUE OF THE OFFENDER'S SHARE OF THE PROPERTY AND THE STATE WOULD RECEIVE THE MONEY AT THE TIME OF THE SALE WHILE ALLOWING THE SPOUSE AND CHILDREN TO LIVE IN THE HOUSE UNTIL A LATER SALE.

Discussion: REP. CLIFF TREXLER suggested that amendment would require changing the title and intent of the bill.

CHAIRMAN CLARK suggested that they keep in mind that this was property bought from the proceeds of drug money.

REP. HURDLE asked if the property was purchased before the involvement with drug trafficking, would it be subject to seizure.

CHAIRMAN CLARK said his understanding was that the property had to have been purchased with the proceeds from drug transactions.

REP. ANDERSON said that it had to be purchased by or maintained by proceeds from drug transactions. He said that there is latitude for considerable prosecutorial discretion, but if they limit it too much as through this amendment it would hinder situations involving major drug dealers. To have a deterrent effect, he thought they needed to allow them to go after the property.

REP. HURDLE said that she felt they were presuming the spouse and children guilty [of knowing involvement] before trial and CHAIRMAN CLARK reminded the committee that it was "still after conviction." The committee continued to debate the issue. REP. ANDERSON clarified the intent of the language of the bill.

REP. HURDLE withdrew her motion.

Vote: The motion to concur carried 18 - 1, REP. HURDLE voted no.

EXECUTIVE ACTION ON SB 63

Motion: REP. WILLIAM BOHARSKI MOVED SB 63 BE CONCURRED IN.

Motion: REP. KOTTEL MOVED TO AMEND SB 63. EXHIBIT 8

Discussion: REP. KOTTEL discussed her amendment and provided rebuttal to the sponsor's closing arguments.

{Tape: 2; Side: A; Approx. Counter: 48.7}

REP. ELLEN BERGMAN responded to the point that the corporations like to go where there is specialized representation and asked why it would bring them to Billings or Great Falls from out of state.

REP. KOTTEL said there were two issues, one being the barring of out-of-state corporations and out-of-state plaintiffs suing in Montana. She said she had a problem with Montana residents who would choose to bring their lawsuit in Cascade County. She believed those people should have their choice of venue.

REP. ANDERSON urged the committee to vote against the amendment. He explained that he felt the amendment muddled the bill and his reasons for that opinion. He did not think there was sufficient reason to treat railroad cases differently than other state corporation cases. He said he was baffled by defense in allowing forum shopping when those trials would continue to be placed in Cascade County if people can elect where they can bring suit. Cascade County residents could still do so. He said the cost to the county taxpayers is significant for the concentration of these cases being brought in that county from outside the county.

REP. BOHARSKI expressed his opinion that in general persons ought not to be allowed to venue shop. He did not think it was a proper use of the justice system. He said that there were five different places where these tort claims can be filed. He felt they all should be treated the same. He refuted the arguments given regarding experts who would give testimony being concentrated in Cascade County.

REP. KOTTEL responded by comparing the distances between Havre to Great Falls versus Havre to Missoula [where it had been stated there were more experts for testimony].

Vote: The motion (on the Kottel Amendment) failed by roll call vote 6 - 13.

Motion: REP. KOTTEL MOVED TO AMEND PAGE 1, LINE 24 TO DELETE THE WORD, "FIRST," AND INSERT "EIGHTH."

Discussion: REP. KOTTEL explained that the reason for the amendment was to enhance the choice of venue to be in a location free from the influence of the railroad. She recalled that testimony from a Lewis and Clark County commissioner included the request that they not enact the law for the First Judicial Circuit. The Eighth Judicial Circuit in Cascade County is where the majority of lawsuits now take place and no one objected to that. It made sense to her to leave it there.

REP. BOHARSKI said that though there was no one from that judicial district for this hearing, in every session in which he had served, someone from the Cascade delegation had asked for more money because the courts in that county are overly full. He recalled hours of floor debate to deal with the overloaded court system in Cascade County. He felt this was one of the big reasons for that.

REP. ANDERSON asked the committee to vote against this amendment and submitted that the organized labor influence might be greater

than the taxpayer influence in Great Falls. But the taxpayers were bearing the brunt of the significant court costs involved. He said that the First Judicial District is used in a number of statutes as the alternate forum for it and if it proved to be a problem it could be corrected in the future.

REP. DIANA WYATT discussed the economic impact to her community (Great Falls) in this bill. She also discussed the positive influence of organized labor in her community. She asked the committee to return to a proper focus in the debate.

REP. BRAD MOLNAR asked if there had been a great deal of financial support for campaigns for judges from organized labor in Great Falls.

REP. KOTTEL objected to the question.

{Tape: 2; Side: B}

REP. MOLNAR said this issue had been raised in the thirteenth judicial race where attorneys were funding judges campaigns in large amounts and wondered if there was a correlation in this case.

CHAIRMAN CLARK said he thought the question bordered on being inappropriate and that the information was public record for someone to explore if they wanted to.

Vote: The motion on the second amendment failed by voice vote.

Discussion: REP. TREXLER said that perhaps the fairness pendulum had shifted in finding a venue. He said that many people on the list who live in Flathead County go to Cascade County to file these cases while there are many experts and good medical care available in Missoula. He said if they were concerned about convenience instead of perhaps the attorney being located outside Cascade County, they would go to Fort Benton to make it even more convenient to those living in Hill County.

Vote: The motion to concur carried 12 - 7 by roll call vote.

EXECUTIVE ACTION ON SB 109

Motion/Vote: REP. ANDERSON MOVED SB 109 BE CONCURRED IN. The motion carried 14 - 5, REPS. WYATT, KOTTEL, SHEA, CAREY and MC CULLOCH voted no.

EXECUTIVE ACTION ON SB 340

Motion: REP. BOHARSKI MOVED SB 340 BE CONCURRED IN.

Motion: REP. BOHARSKI MOVED THE SPONSOR'S AMENDMENTS.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/14/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓ 10:20	✓	
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

SUGGESTED AMENDMENT FOR #1
SENATE BILL 63

EXHIBIT 8
DATE 3/14/95
SB 63

At line 19, after "Montana," add:

and is not an interstate railroad corporation.



HOUSE STANDING COMMITTEE REPORT

March 14, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 63 (third reading copy -- blue) be concurred in.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Anderson

Committee Vote:
Yes 12 No 7.

591249SC.Hbk

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 3/14/95 BILL NO. SB 63 NUMBER

MOTION: Kattel Amendment #1 (Exhibit 8)

NAME	AYE	NO
Rep. Bob Clark, Chairman		✓
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Ellen Bergman		✓
Rep. Bill Boharski		✓
Rep. Bill Carey	✓	
Rep. Aubyn Curtiss		✓
Rep. Duane Grimes		✓
Rep. Joan Hurdle	✓	
Rep. Deb Kottel	✓	
Rep. Linda McCulloch	✓	
Rep. Daniel McGee		✓
Rep. Brad Molnar		✓
Rep. Debbie Shea	✓	
Rep. Liz Smith		✓
Rep. Loren Soft		✓
Rep. Bill Tash		✓
Rep. Cliff Trexler		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 3/14/95 BILL NO. SB 63 NUMBER _____

MOTION: Be Concurred In

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar		✓
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

SENATE BILL NO. 63

INTRODUCED BY CRIPPEN, ANDERSON, CLARK, FISHER, SIMON, TASH, ORR, DEVANEY, SOFT,
KEENAN, HANSON, BARNETT, STOVALL, HAYNE, SIMPKINS, HIBBARD, JENKINS, CURTISS, TOEWS,
BOHLINGER, MESAROS, BENEDICT, GRADY, T. NELSON, TVEIT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PLACE OF TRIAL FOR A TORT ACTION WHEN
THE DEFENDANT IS AN OUT-OF-STATE CORPORATION; AND AMENDING SECTION 25-2-122, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-2-122, MCA, is amended to read:

"25-2-122. Torts. (1) The Except as provided in subsection (2), the proper place of trial for a tort
action is:

(1)(a) the county in which the defendants, or any of them, reside at the commencement of the
action; or

(2)(b) the county where the tort was committed. If the tort is interrelated with and dependent upon
a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of
trial, in the county where the contract was to be performed.

(2) If the defendant is a corporation incorporated in a state other than Montana, the proper place
of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation has its principal place of business corporation's resident
agent is located, as required by law, or in the first judicial district."

-END-